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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, August 1, 2003, at 4 p.m.

Senate

WEDNESDAY, JULY 30, 2003

(Legislative day of Monday, July 21, 2003)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, You give strength to the weak and hope to the weary. You provide us with songs in the night. Great is Your faithfulness. We thank You for daily blessings, for the many moments that are touched by Your providence. We thank You for restoring us every time we fail. Make our faith more sure and help us to be faithful stewards of Your gifts. Give us ears to hear Your voice and hearts to obey You. Guide our Senators today. Teach them Your paths. We pray in Your strong name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 30, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of S. 14, the Energy bill. Under the order, the Cantwell second-degree amendment to the electricity amendment will be debated for 2½ hours. Following the disposition of that amendment, we will have 60 minutes prior to the cloture vote on the Estrada nomination. This will be the seventh cloture vote on his nomination.

Following the cloture vote, we will resume the electricity amendment and, hopefully, we will reach an agreement for the consideration of the two Bingaman second-degree amendments on electricity. The chairman has stated it is his desire for the Senate to work its will on those second degrees and then vote on the underlying electricity amendment. We hope to reach an agreement to allow for that to occur at a reasonable time this afternoon. In addition, there have been discussions about debating and voting in relation to several climate-related amendments during today's session. I certainly hope we can reach reasonable time limits on the amendments as we go forward, so we can have a productive day on the Energy bill. Senators should be prepared to work into the evening with votes as we move through the remaining amendments.

RECOGNITION OF THE ACTING MINORITY LEADER

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

Mr. REID. Mr. President, while the majority leader is on the floor, we have had a number of conversations privately and publicly with the distinguished Senator from New Mexico on this electricity title. As I indicated last night, we have Senators FEINSTEIN, FEINGOLD, BOXER, DAYTON, and CANTWELL who have amendments to offer. All of them but Senator CANTWELL have single amendments. Senator CANTWELL may have two or three others. We will work with Senator DOMENICI to have time agreements on these. I

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

am confident and hopeful that the Senators offering the amendments will agree to time agreements.

I also note—and I say this as respectfully as I can to the distinguished majority leader, who I know has such a difficult job—the electricity title is very complicated. I think we are approaching this in the right way, to move through it as quickly as possible. We are cooperating in that regard. It makes it really difficult, as somebody trying to help move this along and help the two managers, to have these stops and starts. We just get going on something and then we have votes on judges.

I want everybody to understand I know how important Senator HATCH and others believe it is about these judges. For example, on Estrada, this will be the seventh vote. The votes are not going to change. We will take an hour of debate on that and get off the Energy bill, and then we will go back on it. It makes it extremely difficult. Senator DOMENICI told all his committee members during the committee markup that we know the bill isn't perfect, but we will have an opportunity on the floor to amend that. The leader has stuck by that. I think that is important.

Just as an effort to help, because you have to move this bill along, for example, the two Bingaman amendments—Senator DAYTON cannot offer his amendments until those are disposed of. That is another procedural matter we have to deal with here.

We recognize we have a lot of work to do. We squeezed in yesterday an hour on trade while everybody was at the White House. I know the leader wants these two bills done, and the White House talked about how important they are. I think it is good we have time down as low as we do on a bill people feel so strongly about. From what I know, it should pass fairly easily—both of those trade agreements.

In short, I want the Senator from Tennessee, who, I repeat, has a tremendously difficult job, to understand we are doing everything we can to cooperate. I stated yesterday twice, and I will start the day off today saying, I don't know of a single Senate Democrat who doesn't want an Energy bill. The time line you have given us makes it really tough. We will cooperate in any way we can to move the schedule along despite the difficulties I see.

Mr. FRIST. Mr. President, first of all, I appreciate the assistance of the distinguished assistant leader on the other side of the aisle in moving the Energy bill forward. We had the opportunity yesterday to have a bipartisan meeting with the President of the United States, who once again called for this body to address energy as expeditiously as possible, allowing appropriate time for debate and amendment.

The President set out his energy policy 2 years and 2 or 3 months ago and has called upon this body to work its will. The House has done that and passed a bill. We have not done that and the American people deserve it. That is why we brought this bill to the floor on May 6. That is why we have spent 17 days on the bill. That is why we are working as hard as we can to complete this bill in the next 3 days. I think we are working well together. It is a complex bill. We debated days and days last year. It has been taken through committee this year and marked up and brought to the floor appropriately. We are making real progress there.

The issue of judges, though, bothers me. It has been brought up every time I say we have to keep moving forward and that we owe it to the American people on this Energy bill, and then we have a few votes on judges. That is brought up as if that is slowing down progress on the Energy bill. It disturbs me.

First of all, all we are saying is let's give Miguel Estrada an up-or-down vote. That is all we want. If you don't like him and you want to vote against him, do it. We think that when judicial nominees come from the White House to us under advice and consent, we deserve the opportunity to express that advice and consent, and the only way we can do that is by voting. Each seat here has one vote. Let people express their will and, if the nominees are successful, fine. If not, we will move on. That is what we are saying.

I also want to make it clear on what we are having to do this week. Clotures filed on our side of the aisle don't require any debate. They require a vote and that is all we ask. Again, we want to keep things moving. We have been willing, as I said time and time again, to stack the votes among the other energy amendment votes. We don't require the debate or time. It is the other side that is requiring the time.

Another issue we have not really talked about, at least on the floor, is these votes on district judges, which is essentially unprecedented, which is being required of us today, if we look to the past, if we compare it to the past. The whole issue on both sides of the aisle is that many, if not most, of these could be approved by unanimous consent. Many, if not all, confirmations have to be by rollcall votes. Because there is this call from the other side of the aisle for rollcall votes, which traditionally in this body have been handled, for the most part, through voice votes, we are having to factor those rollcall votes, which take time, into the Senate schedule if we are going to demand justice around the country. If we do not get these judges confirmed, justice is, in effect, delayed. So they put a huge demand on us—really me as majority leader—demanding what has not been done in the past, rollcall votes, which take time and we have to factor them into the schedule, which does delay our schedule unnecessarily, and it means later hours at night and starting 30 minutes earlier in the day to accommodate the demands they are putting on us.

That, to me, is challenging. It is challenging that we work on this important Energy bill and, for the most part, these rollcall votes on the district judges are challenging.

To make that point, if we go back to the 105th Congress, there were 100 judges—20 circuit and 80 district judges. In that Congress, there were 25 rollcall votes—7 circuit, 18 district. So on about 25 percent of the 100 judges, rollcall votes were required.

If we move to the 106th Congress, there were 72 judges confirmed, and 18 of those were rollcall votes.

If we go to the 107th Congress, there were 100 confirmed and 59 rollcall votes.

And if we go to the 108th Congress, the present Congress, 37 judges have been confirmed. We have had to have 28 rollcall votes.

What is interesting is that of those 28 rollcall votes, 23 were unanimous. So we had rollcall votes, and all 100 Senators, or everybody present and voting, voted to confirm. Eighty-two percent of them were unanimous.

We can see this trend going back to the 104th Congress when there were 73 judges confirmed, and there were zero rollcall votes. What has happened in this Congress, because of the request from the other side of the aisle, is this demand that all of these judges, not just the circuit judges, but the district judges, have rollcall votes. Therefore, it has made it very difficult.

When it is brought up that our voting on judicial nominees is slowing the work of the Senate down, I ask the other side to at least consider what happened in the 103rd, 104th, and 105th Congresses in terms of the number of rollcall votes required.

ANNIVERSARY OF THE MEDICARE ACT

Mr. FRIST. Mr. President, I am going to come back later today and comment on the fact that today is the anniversary of Medicare. I know we want to move on to the pending bill. It was a historic day in 1965. On this day, President Johnson took the historic and bold action of signing Medicare into law.

Since that time, Medicare has helped millions of seniors cover their health care needs, but Medicare, in 1965, was designed to treat episodic illness and did not include the most powerful tool in medicine today—prescription drugs.

I mention this only because we have an opportunity before us, this body already having spoken its will in passing a comprehensive Medicare reform bill that strengthens and improves Medicare and includes prescription drugs. The House has done likewise. We are currently in conference. By working in conference, we will greatly strengthen and improve Medicare. Over the course of the day, I know there will be other statements, but there will also be a service and a statement about Medicare at the White House later today.

We have a great opportunity before us. I wish to share with my colleagues that the conference is going well and sometime after we come back from the recess, we will have a bill to bring back to this body.

Mr. REID. Will the Senator yield?

Mr. FRIST. Yes.

Mr. REID. Mr. President, I say not only did President Johnson sign that extraordinary bill—38 years ago?

Mr. FRIST. Yes, 1965; 38 years ago.

Mr. REID. As soon as he signed the bill, Congress went out of session. That was a good example.

Mr. FRIST. Well said.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

ENERGY POLICY ACT OF 2003

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 14, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Pending:

Campbell amendment No. 886, to replace ''tribal consortia'' with ''tribal energy resource development organizations''.

Durbin modified amendment No. 1385, to amend the Internal Revenue Code of 1986 to provide additional tax incentives for enhancing motor vehicle fuel efficiency.

Domenici amendment No. 1412, to reform certain electricity laws.

Bingaman amendment No. 1413 (to amendment No. 1412), to strengthen the Federal Energy Regulatory Commission's authority to review public utility mergers.

Bingaman amendment No. 1418 (to amendment No. 1412), to preserve the Federal Energy Regulatory Commission's authority to protect the public interest prior to July 1, 2005.

The ACTING PRESIDENT pro tempore. Under the previous order, there shall be up to 2½ hours of debate on the amendment to be offered by the Senator from Washington, Ms. CANTWELL, with 30 minutes under the control of the chairman, and 2 hours under the control of the Senator from Washington. The Senator from Washington.

AMENDMENT NO. 1419 TO AMENDMENT NO. 1412

(Purpose: To prohibit market manipulation)

Ms. CANTWELL. Mr. President, I call up amendment No. 1419.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. WYDEN, Mrs. BOXER, and Mrs. MURRAY, proposes an amendment numbered 1419 to amendment No. 1412:

Strike section 1172 and insert the following:

SEC. 1172. MARKET MANIPULATION.

(a) PROHIBITION.—Part II of the Federal Power Act (as amended by section 1171) is amended by adding at the end the following:

''SEC. 219. PROHIBITION ON MARKET MANIPULATION.

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219''.

(c) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

''(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219, the Commission shall, in addition to any other remedy available under this Act, revoke the authority of the public utility to charge market-based rates.''.

Ms. CANTWELL. Mr. President, I thank the clerk for reading this amendment, particularly at such an early hour of the morning. The reading of the amendment by the clerk shows exactly what we are up to this morning; that this is a simple amendment and a simple action we are asking the Senate to take. We are simply saying market manipulation under the Federal Power Act cannot be just and reasonable, and market manipulation should be found, under the Federal Power Act, by the Federal Energy Regulatory Commission, to be a wrongful act.

It did not take long to read that amendment but, as I said to this body last night, the fact that such law is not currently on the books has caused the ratepayers in my State great harm. It has caused ratepayers in Snohomish County, where I happen to live, a 54-percent rate increase. It has caused ratepayers in King County a 61-percent rate increase. It has caused ratepayers in Vancouver, WA, and businesses in Vancouver, WA, that can easily move to other parts of the country, an 88-percent increase. In eastern Washington, the part of the State hardest hit economically, where jobs are few and farmers struggle, it has caused ratepayers a 71-percent rate increase.

We are not talking about a rate increase that is just for 1 year. We are talking about long-term Enron contracts that were manipulated—knowingly manipulated—and my ratepayers are stuck paying those contracts for the next 5, 6, and 7 years without relief.

We are here today to say one thing and be clear about it: This kind of manipulation that gouges ratepayers should be prohibited. This body should be clear. We should be unequivocal. We should say, as other entities have said, that this kind of manipulation is wrong and needs to be corrected.

I have a lot to say on this amendment this morning, but I know I am going to be joined by many of my colleagues from the West who have had their economies wrecked by gouging and illegal practices. I want to give them an opportunity to say something, too, because I think the face of the west coast economy and what it has meant for ratepayers needs to be clear.

We are trying to say with the Cantwell-Bingaman amendment that we do not want to see this kind of action happen on natural gas prices in other parts of the country. We do not want to see this take place 4 months from now, or 2 years from now.

Let's be really clear. These kinds of practices that were deployed by Enron, the various schemes of Fat Boy, Ricochet, Megawatt Laundering, and Load Shift are illegal.

I will yield 10 minutes to my colleague from Washington State, Mrs. MURRAY, who knows all too well that this crisis has caused real hardship in our State. She has been outspoken on this issue as well and sent many letters to various entities, including the Federal Regulatory Energy Commission, talking about how we need to make changes.

I yield her 10 minutes this morning to talk about some of the impacts she has seen firsthand.

The ACTING PRESIDENT pro tempore. The Senator from Washington, Mrs. MURRAY.

Mrs. MURRAY. Mr. President, I rise today to support the amendment that has been offered by my colleague from Washington State, Ms. CANTWELL, that will help protect our consumers from this electricity market manipulation.

I begin by thanking Senator CANTWELL for her tremendous work on the energy commitment and her long-time work on trying to make sure consumers in my home State of Washington finally receive the attention and the help they need from us at the Federal level because of the gouging that has gone on in this market manipulation. We have seen the dramatic impacts that she has so eloquently talked about.

I thank her for speaking out on behalf of our Pacific Northwest consumers who are hurting. We have had the first, second, or the third highest unemployment rate for almost 2½ years, much of that precipitated by the fact of the energy spike costs that have hit the west coast, causing many of our cold storage companies, the aluminum industry, to shut down. They are laying people off. The effects of that reverberated throughout our economy, as other industries were hurt. Even our schools were hurt as they had to lay off teachers in order to pay energy bills.

It has had a tremendous impact on our economy and continues to do so. Bringing this amendment to the Senate floor today is absolutely critical. If we are going to have an electricity title, and if we do not deal with what happened in market manipulation, we are only going to see this continue.

We have a responsibility at the Federal level to protect our consumers at home. In fact, that is the responsibility of the Federal Regulatory Energy Commission. This amendment is so critical to making sure that we can go home and tell our consumers we are doing the right job of protecting them and the market manipulations that have occurred in the past will not occur again. Without this amendment, we will not have the ability to say that.

As Senator CANTWELL stated, all of us on the west coast remember the energy crisis of 2001. Our consumers and our businesses were hit with massive increases in the cost of energy. In California, they saw shortages and brownouts that were incredible. In Washington State we have felt the impact in every sector of our economy and in every home in our State. In fact, as I will talk about in a moment, we in Washington State are continuing to be penalized for the failures in the energy market and failures by our Federal energy regulators.

There were certainly many causes for the energy crisis that hit us, but the most disturbing is the fact that energy companies manipulated the marketplace specifically to take advantage of the customers. As we saw throughout that crisis, the Federal Regulatory Energy Commission did not take aggressive action to protect consumers from market manipulation. The amendment that has been offered by my colleague, Senator CANTWELL, will direct FERC, the Federal Energy Regulatory Commission, to revoke those market-based rate authority companies that have been found to knowingly engage in electricity market manipulation.

Our experience on the west coast shows why this amendment is so important and why FERC needs to be better policed in the energy market. For more than 2 years, many of us in the northwest delegation have been urging FERC to better protect our consumers. In fact, way back in March and April of 2001 and again in May of 2002, I sent letters to FERC calling for relief from this energy crisis. I asked for Federal price caps to stabilize the market. I asked for Washington State utilities to receive refunds, as California utilities received, and I urged FERC to report criminal activity to the Department of Justice.

Finally, on March 26 of 2003, FERC found that market manipulation occurred during the 2001 west coast energy crisis. Unfortunately, FERC indicated it was highly unlikely that Washington State ratepayers would be reimbursed for the harm that was caused by that market manipulation. That is really unfair when we look at what happened throughout that crisis.

At the height of the 2001 energy crisis, when Enron and others were manipulating the system, FERC was urging companies to enter into long-term contracts. Many of our utilities in the Pacific Northwest followed their request and entered into long-term contracts at highly inflated rates.

According to the Seattle Times, during the energy crisis the Northwest wholesale market averaged $276 per megawatt hour. That is 16 percent higher than the average prices in northern California, and 28 percent higher than in southern California. So it was really disturbing to all of us to see FERC agree that there was manipulation but then leave Washington State ratepayers holding the bag with no relief for the harm they experienced and continue to experience because of these contracts.

Clearly, FERC needs to be more aggressive in protecting our consumers. It needs to uncover and it needs to report market manipulation much earlier. It needs to have the authority to take action against companies that defraud the public and defraud the people in our States by manipulating the electricity market. The amendment that Senator CANTWELL has offered will direct FERC to take aggressive action against predatory energy companies that manipulate the market, and I strongly urge my colleagues to support this amendment.

This amendment will improve the underlying bill. It is extremely important. We need to have this kind of confidence if we want to see our ratepayers able to survive in the coming years.

I do have a lot of other concerns about the Energy bill and about an effort by Federal energy regulators. As my colleagues know, FERC is now pushing what they call a standard market design which would set uniform national standards for operating regional transmission grids, transmission grids that allow energy to be passed back and forth between communities that are in each region and their wholesale energy markets. Unfortunately, what FERC does not understand, what the bill does not understand, is that a one-size-fits-all solution is not going to fit the unique needs of the Pacific Northwest.

In New England, if they want to increase or decrease energy production, they burn more gas or more coal. They can regulate that industry. But in the Northwest, we cannot make it rain more or less based on some kind of profit schedule. Standard market design does not work in the Pacific Northwest. We cannot run our system that way because it is not designed to meet all of the needs we have. It means more opportunities for market manipulation and price gouging by big out-of-State energy companies.

As we have already talked about, we know FERC has already failed to protect Washington ratepayers from market manipulation. Given that, I think it is particularly unwise to allow FERC to take authority away from our State regulators through this standard market design and other proposals that are floating around through Congress and in this bill.

I am also very concerned that the Energy bill repeals the Public Utility Holding Company Act of 1935 which restricts utility ownership.

Although Senator DOMENICI's substitute electricity amendment—which we have just gotten, we are reviewing, and is now in this bill—does include some remedies to protect consumers, it does not go far enough. Just look at the devastating effects of the 2001 energy crisis to see we have to do more to protect our consumers. It is our utmost responsibility. I am concerned the electricity title in this bill fails to do that.

It is clear this Energy bill we are debating does not do enough to protect consumers against market manipulation and could actually facilitate more opportunities for manipulation. As currently written, it does not provide enough remedies to help our consumers who have been victimized by market manipulation.

That is why I am in the Senate today to support my colleague from Washington State, Senator CANTWELL, and the amendment she has offered. We have the utmost responsibility to assure market manipulation is not going to continue again. We know the effects in the Pacific Northwest. Senator CANTWELL has outlined the average rate increases that have hit our State because of market manipulation. Energy price increases affect every sector of our economy. They affect every person in our State. They affect everything from how we can operate our schools, how many teachers we can have versus how many energy bills our schools have to pay, to whether potential new homeowners can afford a home. A 51 percent rate increase means we have more families in the State of Washington who cannot afford to buy new cars, new refrigerators. That affects our economy in the Pacific Northwest and has a rippling effect to our businesses, which have laid off thousands of employees because they cannot afford to pay their increased electricity costs.

The market manipulation amendment of Senator CANTWELL is an absolutely critical amendment to assure we can protect our consumers in the future. Failing to pass it is a failure of the responsibility we have as Senators. I urge its passage.

I thank my colleague for yielding on this critical matter.

Ms. CANTWELL. I thank Senator MURRAY for her articulate capsulization of what this Energy bill and the Domenici title means to the Northwest.

The Senator has hit it right on the head, in that market manipulation has not been adequately dealt with in this legislation. Not only has there been no strong stand against market manipulation, there are further attempts toward deregulation with standard market design and regional transmission organizations that we in the Northwest find ludicrous.

I ask unanimous consent to have printed in the RECORD a Seattle Post

Intelligence editorial from this morning's newspaper saying that the dubious Energy bill might be better shelved.

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

[From the Seattle Post-Intelligencer, July 30, 2003]

DUBIOUS ENERGY BILL BETTER SHELVED

Republicans hope to drive the Senate toward a new energy bill this week. We all know what happens when you drive too fast; caution is lost in the rush to judgment.

For both the Northwest and the nation, the bill contains at least a trio of contenders for worst idea of the year—more deregulation of electricity, nuclear power subsidies and a new look at offshore oil drilling.

The West Coast is still trying to recover from cost increases created by deregulation schemes and market manipulation. Loan guarantees for nuclear reactors and a permanent cap on liability from accidents could increase radioactive waste—as if Hanford didn't have enough now. And, the idea of putting oil drilling platforms on more of the nation's coast was rejected decades ago.

The plan would also tilt relicensing of hydroelectric dams in favor of industry-designed environmental provisions. Don't expect that to help salmon runs.

Senators have a host of ideas for improving the bill: better vehicle mileage rules, new global warming standards and more incentives for renewable energy sources. The White House has intervened to try to move the bill forward, but senators must recognize they are starting from a tough spot. The existing bill is tainted because its roots are in closed-door meetings between Vice President Dick Cheney and his energy industry pals.

That kind of abuse during the Clinton administration killed health care reform. If senators hope to rescue the energy plan from its dubious origins, they had better plan on months of work.

Ms. CANTWELL. I thank my colleague for her diligence in expressing her opinion on this issue.

The RTO and standard market design issues she mentioned this morning show how unsound this idea is, not only in not protecting us from market manipulation but saying in a conceptual scheme, let's have a nationwide regional energy grid and let the people who will pay the most; that is, the power source that is willing to pay the most to get on to the grid, let them decide how power will be distributed.

For people in the Northwest, if we had power produced at cost-based rates; that is, cost plus what it takes to deliver to consumers—but all of a sudden FERC is pushing a concept of standard market design and saying, Enron or Reliance has more expensive power, we will shove it on to your grid and you pay that higher rate. As Senator MURRAY adequately pointed out, this is not a plan we endorse.

Some of my colleagues from the South also have concerns. Not only does this bill not do enough in protecting manipulation, it creates the possibility for more loopholes, more havoc, more chaos. Frankly, this is exactly how California got in trouble. Regarding a lot of market-based deregulation of the industry, everyone thought it would be competitive practices by which the cost of electricity would be driven down. This is not like something one can afford to have the price go up.

One county, Snohomish County, had a 54 percent rate increase. We had printed in the RECORD yesterday an article from the New York Times that Snohomish County has a 44 percent increase. Consumers got disconnected from their electricity because they could not afford to pay. This is not one of these schemes when the ''free market'' does not drive down the price of a utility and ratepayers have something to do. They cannot go over to Nordstrom's and buy a cheap electricity contract and get electricity. They cannot go over to Wal-Mart and buy affordable electricity. They are stuck with these rates. They are stuck with the 54 percent increase and they will be stuck for years ahead. We had a 44 percent disconnect rate in that county.

Mrs. BOXER. Will the Senator yield?

Ms. CANTWELL. I yield.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from California.

Mrs. BOXER. I thank the Senator for her leadership on this amendment. I know there are several other amendments she will be offering.

The Senator has explained very clearly what has happened to real people who are trying to pay their bills on something that is absolutely necessary for life itself.

I ask my colleague a question on this point. In California, where we had this all begin, there was some ill-advised legislation signed into law by then-Governor Pete Wilson which brought this deregulation to my State. Is my colleague aware that the rates started to double, triple, and more, in our State, that our State government under Governor Gray Davis said, the people cannot afford this. He went out and said that he would, in fact, take care of this crisis.

As a result, our State is in deep debt. About a third of our debt can be related directly to what the electricity companies did with their schemes that you are going to be explaining and I will be talking about later.

Is my colleague aware that a third of the problem in California is directly related to the energy scam?

Ms. CANTWELL. I thank the Senator from California for asking that question and for being a cosponsor. The Senator understands all very well how painful this has been to the California economy.

I was not aware that a third of the problem could be directly attributable to the crisis in California. I know businesses have closed in Washington State. I know people have moved to other regions and made other investments because the rate is high in our State. I know the amount of money paid by higher utility costs for our west coast region is $6 billion. Ratepayers in the West paid a $6 billion increase in their electricity bills because of the market manipulation.

When I think about the little time we have, maybe 6 hours total to debate this amendment, we gouged the ratepayers $1 billion and we are going to talk $1 billion an hour here. That is hardly the remedy for which I think people are looking. What they are looking for is some immediate action, saying these kinds of activities will not take place again, in the future.

So the Senator from California, Mrs. BOXER, is correct. The impact has been devastating. It has been devastating to California's economy, and obviously we would like to see some relief. For the moment, what we are trying to say in the Cantwell-Bingaman-Feinstein-Boxer-Hollings-Wyden amendment is that this kind of market manipulation ought to be outlawed specifically in the Power Act today so this does not happen again.

As we are looking at natural gas price increases and people are getting anxious, why would we have an electricity title that is unclear as to what the penalties are? Actually, under the Oxley legislation of Senator SARBANES and Congressman OXLEY, on the SEC side, on the auditor's side, it said: We are going to get tough. These are new requirements. We are going to put this in the statute. Yet on the electricity title, we are repealing PUHCA, as my colleague from Washington State said, the one consumer protection law that has been on the books since 1935.

Why would you change a law that has been on the books since 1935 when you just had the biggest pyramid scheme ever to defraud consumers, knowingly admitted by Enron, knowingly admitted by FERC, knowingly admitted by the Department of Justice, knowingly printed by every newspaper in the country that manipulation was going on? Why would you repeal the consumer protection laws on the books? You would actually try to enforce them.

That is what the Cantwell amendment does today, as the clerk read this morning. It simply says the manipulation of those contracts cannot be just and reasonable and put that in the Power Act, plain and simple. Plain and simple, not the 43 pages we have in the title addressing this issue, which I am sure tries to address the issue, but it falls far short.

Mrs. BOXER. Will the Senator yield for just a moment on this point? I am going to go into a markup and then return.

Ms. CANTWELL. Yes.

Mrs. BOXER. My colleague points out that what she is attempting to do in this amendment, of which I am so proud to be a cosponsor, is to make sure what happened to Washington and Oregon and California is not going to happen to any other State, be it Kansas, be it Illinois, be it anywhere else.

For the life of me, I guess I need to say to my friend, does she understand why anyone in this Chamber, knowing what happened to our States, knowing what happened to our businesses,

knowing what happened to our consumers, knowing what happened, in the case of California, to our State budget because our Governor protected the consumers from these rates—can my friend understand why there would be one vote against her amendment, given what we know happened to us?

Ms. CANTWELL. My colleague from California has asked a question that is very important. No, I cannot imagine why any of my colleagues would want to vote against this amendment that prohibits market manipulation and puts that in the Power Act in a very simple way.

She mentioned something very interesting. A lot of people talk about this as the California energy crisis—the California energy crisis. Her economy has been devastated, but California actually had a retail cap, which meant even though those prices were being charged, and it left the California economy in disarray and a bill at the State legislative level that is exorbitant, what happened in Washington State, because we didn't have retail caps, is that the ratepayers actually saw the increase in their day-to-day electricity bills. They saw it to the tune of 88 percent increases, 61 percent increases, 54 percent increases. Those disconnect notices are real. The companies that have left or are leaving the State are real. The long-term impacts on our economy are real.

No, I cannot imagine, if this had happened to any of my other colleagues from other States, that they would not be in the same position I am in today, or Senator MURRAY, saying, at a minimum, outlaw this market manipulation.

So I appreciate the question the Senator from California has asked. I appreciate her keen attention to this issue. I know she has spoken many times on the floor about what has happened to our colleagues from the West and particularly how devastating it has been to her State. I appreciate that.

Mr. DORGAN. Will the Senator from the State of Washington yield for a question?

Ms. CANTWELL. Yes.

Mr. DORGAN. Mr. President, I know she has limited time. I will be very brief, but I did want to ask the question.

It seems to me this electricity title is critically important. I heard my colleague from California ask some questions. I chaired the hearings that dealt with the Enron abuses and other abuses in California and the west coast when I was chairing a subcommittee of the Commerce Committee. What happened there was egregious. It was wholesale stealing, and I use the word ''stealing'' in a very direct way. There are massive criminal investigations underway.

We have heard the terms Get Shorty, Fat Boy, Death Star—the schemes we unearthed. The people, in memoranda inside the company, were saying: Here is the way we are going to cheat consumers. They created congestion, and they then got paid for removing the congestion that they created. They actually deliberately cheated consumers, not to the tune of a couple of loaves of bread but to the tune of billions and billions of dollars.

It seems to me, as this energy title is written, there is not one person in the Senate—not one—who would stand up and say: It is fine for consumers to be confronted with that sort of manipulation and cheating or criminal behavior. Not one would say we support that kind of behavior.

If that is the case, if no one is going to support that, and they would not, then should we not write an electricity title that represents the best ideas of both sides of the political aisle here; that says we are going to stop criminal behavior; we are going to stop the kind of activities that attempt to steal from consumers?

I ask the Senator from Washington, have you had an opportunity, or perhaps has the ranking member of the committee had an opportunity, to sit down with those who wrote the electricity title, which we received last Friday, and talk to them about perhaps writing it together so we all accomplish that which we say we intend to accomplish—stopping this kind of manipulation and cheating? Because it did exist and it will again if we do not plug the hole.

Ms. CANTWELL. I thank the Senator from North Dakota for his question. I know he has been diligent, being at the committee hearings during the time period in which the West tried to convince the Federal Energy Regulatory Commission—the policeman on the watch, if you will, when this mugging of ratepayers was happening—we tried to convince the Federal Energy Regulatory Commission that prices were too high, that we were getting gouged. The Senator was very articulate at that time and subsequently, on the Commerce Committee, holding hearings, investigating the activities of Enron.

At that time, we were all speculating that manipulation happened. What has since come out is that the manipulation has been admitted to. It has been admitted to in the memos by the company in those various schemes you have talked about, and we have charts showing the names, of Death Star and Fat Boy and various other schemes. We have had the Federal Energy Regulatory Commission own up: Yes, this is market manipulation.

I have a report here, that is almost too heavy to handle, that basically documents all the manipulation that has happened. We have a Department of Justice investigating and saying yes, manipulation has happened. Yet this electricity title is very scant on putting those things in place.

The Senator is right. This new electricity title appeared last Friday night. I don't know what time it was, but well beyond the time, I am sure, that I was home in Washington State. We started in on it on Monday. But the bottom line is this underlying Domenici title has some language about: Let's make sure there is no false reporting.

That is in the current statute. It didn't save us. It didn't have anybody stop this or basically put everybody in jail.

Frankly, every time I get home, I hear from a constituent who is paying this high energy cost, paying this 61 percent or 88 percent rate increase, saying: Why isn't Ken Lay in jail? Why is it I am paying this rate increase and I am going to be paying it for 5 or 6 years and Ken Lay isn't in jail?

The transparency clause here is already on the books, making sure people do not report false information to the organization known as the Federal Energy Regulatory Commission. That is already on the books. The round trip trading, yes, is eliminated. But we have other schemes in this bill that are not included in the electricity title and are not outlawed. I think it should be simple.

The Power Act was created to protect consumers. We decided in interstate commerce; that is, the selling of power between States, that the Federal Government should play a role in protecting consumers on wholesale power rates.

We gave to the States the ability through their utility commissions the responsibility to protect consumers' electricity that is sold within each State. But we said as a Federal Government we want to make sure consumers have oversight of electricity. We said in the Federal Power Act we are going to make sure that rates are ''just and reasonable.'' That is our job—''just and reasonable.'' We set up a commission to do it. Yet now we have seen that market abuse is continuing. And we have colleagues on the other side of the aisle who are proposing we repeal the only consumer protection law which has been on the books since 1935—the Public Utility Holding Company Act—and in its place put some language that basically smacks the hand of Ken Lay but doesn't have any teeth in it—teeth that will really bring to justice people who have manipulated this market.

We may have another day when we can discuss what kind of relief might be given to California or Oregon or Washington. But this amendment today is geared toward protecting people from future abuse by simply saying in the Power Act that manipulated schemes are not just and reasonable; that they ought to be banned in the Power Act. I don't know what is wrong with saying that. I would like to go over the specific details so my colleagues understand exactly what we are trying to say and why the current underlying title comes up short in the sense of not doing enough to protect consumers.

As I said, first of all, the Power Act put in place a broad prohibition on the manipulation of electricity prices. We want to continue that. We want to make sure that in this language we say

manipulated electricity prices are wrong. In the Domenici substitute, we are going to say that round-trip trading; that is, buying and selling of electricity at inflated rates and inflated volumes, is illegal. That is a good thing to do. But that is particularly focused on the shareholder.

We are saying let us protect the shareholder to make sure these guys who are in this manipulative practice of buying and selling on the same day and inflating the price and inflating the volume is wrong and illegal. That is good in protecting shareholders. But how are ratepayers protected? I want to see protection for ratepayers.

In particular, my amendment would add a new paragraph to the act which is based on language the Federal energy commission has had in its power since 1934. This language would make it illegal for any company to use or apply any manipulative or deceptive device to circumvent the Federal Energy Regulatory Commission rules and regulations on market manipulation.

It is simple. Let's just say it. What is wrong with saying what Enron has admitted they have done? What is wrong with saying what the Federal Energy Regulatory Commission has put in the report? What is wrong about saying what DOJ has said about manipulation? Why not be really clear and specific? Any company that uses or applies any manipulative or deceptive device to circumvent Federal Energy Regulatory Commission rules and regulations on market manipulation should be punished.

Second, we want to say specifically that electricity rates resulting from manipulative practices are not just and reasonable under the Federal Power Act.

As we talked about last night and as some of my colleagues have said, we have the establishment of the Power Act and the protections of ''just and reasonable,'' and it is our responsibility as a Federal Government to regulate wholesale energy prices between States. Why? Because in the 1930s, guess what happened. A bunch of companies had too much power and jacked up the price on consumers. They held them hostage. Electricity is something no one should be held hostage for, and certainly no one should lose their home because of a manipulated contract by a company that put a scheme in place.

We had a hearing before the Energy Committee in which I asked the Federal Energy Regulatory Commission chairman, ''Do you think if you find market manipulation that it is ever going to be 'just and reasonable,' or ever in the public interest?'' Chairman Wood told me, ''I can't think of an instance when it would be.''

We have the chairman of the Federal Energy Regulatory Commission saying I can't think this would ever be in the public interest or ever be just and reasonable. So why not put it in the Power Act? Guess what. Chairman Wood doesn't write legislation. We write legislation. We are the body that needs to take the responsibility. We are the body that needs to say to the American people we got the message that market manipulation has occurred.

My amendment would clear up any confusion and specifically declare in the Power Act that market manipulation is unjust and unreasonable.

Lastly, this amendment would amend the section 206 of the Federal Power Act requiring the Federal Energy Regulatory Commission to revoke the company's authority to sell at market-based rates whenever the commission finds it ''knowingly'' employs a strategy to manipulate the electricity market. It says when the Federal Energy Regulatory Commission finds people have manipulated a market that they revoke their market-based rates. Market-based rates is when the company decides what the rates are.

As I said, we in the Northwest have been traditionally comfortable with cost-based pricing that the public Power Act provided. Why? Because consumers get the power at the cost it takes to produce it. As a former business executive, I am all for marketplace competition. But marketplace competition has to have some regulation or some people basically end up controlling the market and consumers get whacked whatever they want. In this case, we know manipulation happened.

Why is this issue so important that we have to actually say to the Federal Energy Regulatory Commission make sure when these contracts have been manipulated that you revoke the market-based rate authority? Believe it or not, even though Enron, months and months ago, admitted in various memos that they manipulated the market, it wasn't until about 2 weeks ago that the Federal Energy Regulatory Commission actually revoked their market-based rate authority. Maybe it was 17 days ago. Sometime in the last 2½ weeks, the Federal Energy Regulatory Commission finally took the action they should have taken over a year and a half ago. We have a Federal agency that has been laggard at addressing this issue.

While we will have other amendments to address the Federal Energy Regulatory Commission and address the fact they have not stepped up to their appropriate role in being the policeman on the books as this mugging of ratepayers happens, because clearly they haven't—it took us, the Members of the Senate and House of Representatives pounding on them for months about the high cost of electricity in our region to finally get a mitigation plan. Over a year later it finally took the hearings of Senator DORGAN and many others and an investigation that we finally got the truth on the table that contracts were actually manipulated. Now it is going to take the effort and focus of this body to say, Let's make it simple. Let us make it really clear: Manipulation of contracts is unjust and unreasonable. Any company that employs such tactics should not have free rein of the market by having market-based rates allowed under the Federal Power Act and the Federal Energy Regulatory Commission. It is simple.

I want to point out to my colleagues the fact that there are other entities that are way ahead of the game; that is, they are way ahead of us. They are way ahead of this body in saying that Enron manipulated contracts and something ought to be done about it. And that is bothersome. I think we are the protectors of the consumers in the oversight of how well an agency is doing its job and to which we have delegated the responsibility.

I am sure there are people in this body who probably never heard of the Federal Energy Regulatory Commission until this crisis happened. I am not sure the agency has had the bright light of day shined on it too often in its Congressional history.

In fact, the Government oversight committee, then chaired by Senator LIEBERMAN during this energy crisis, had some hearings on whether the Federal Energy Regulatory Commission was doing its job. I thought that was very appropriate. It is very bothersome to me there are many newspaper articles and accountants of Ken Lay actually lobbying members of the Federal Energy Regulatory Commission on whether they should have a cap or a plan in trying to control or mitigate prices in the western energy market. He lobbied for Commissioners he thought would not put a cap in place. He lobbied for people he thought would continue the trend toward deregulation of the market.

I do not know why we should listen to Ken Lay's energy plan and who he thinks should be the nominees in these instances. We even have one newspaper article that suggested he was for the renomination of the current Chairman of the FERC but only if he would continue to have a free market strategy and make sure these prices that basically had been charged were kept in place. I think that is unconscionable. We need to do something to make sure this agency has our trust in the Senate and the trust of the American people. I think that is critically important.

Even though my colleagues have been hearing about this crisis for a couple years and some may think it is over, it is not over for the ratepayers of Washington State. It is not over for the California economy. We are stuck with this bill. We are stuck with the impact of these manipulated prices.

But I want to be clear, there are people who knew this was going on. And they have admitted it—Enron itself. Enron knew we were going to get access to this information eventually, so basically they produced the smoking gun memos where the company said it engaged in practices to manipulate the western power market. And they knew it was wrong.

In fact, even when these memos were starting to be uncovered, people realized these tactics had these exaggerated names that were not going to sound too positive, so they ended up saying: Well, let's change the names. I am not sure if it was Fat Boy—oh, yes, Death Star. Death Star was the name of a tactic used to manipulate the market, and they said: Well, if that comes out maybe that won't sound like such a good name. Let's change that to Cuddly Bear.

So somehow we were not going to find out there was market manipulation in place because Death Star all of a sudden became Cuddly Bear. It does not matter whether you change the code name, the impact on my State is the same. It is wrong, and this body ought to outlaw it.

So when FERC finally began to investigate, they realized this problem, as their report concludes, was significant and ''epidemic,'' and the epidemic market manipulation took place in the West. Their own report says there is overwhelming evidence that suggests ''Enron and its affiliates intentionally engaged in a variety of market manipulation schemes that had profound adverse impacts on the market outcomes.''

In fact, the report goes on to say:

> Enron's corporate culture fostered a disregard for the American energy customer. The success of the company's trading strategies, while temporary, demonstrates the need for explicit prohibition on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement.

That is what the Federal Energy Regulatory Commission is saying has transpired and what we need. It ''demonstrates the need for explicit prohibition on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement.''

It is not FERC's job to write the law. It is FERC's job to enforce it and interpret it. Our job is to act. They are telling us they need to have this market behavior monitored and enforced, and that this problem demonstrates the need for an explicit prohibition. Let's give them that explicit prohibition. Let's put into the Federal Power Act that the manipulation of prices cannot be just and reasonable and companies that participate in that practice do not deserve to have market-based rates.

As I mentioned, FERC just came to this conclusion recently, so it is a little troubling that it took them so long, after so much damage has been done—$3-plus billion to the California economy, over $1 billion to the Washington economy, and billions more to Oregon and, I am sure, other parts of the West. So we don't want them to be confused or slow to pick up the regulatory framework and to use it as a hammer against these kinds of manipulations. So let's make it really clear.

DOJ thinks this manipulation is wrong. The U.S. Department of Justice believes what Enron did was, as they said, wrong and fraudulent. The Department of Justice continues to conduct investigations into Enron's activities. It has filed criminal charges levied against 16 different employees, most recently resulting in one of those 16 arrested, a trading desk manager. Already, two Enron traders have pleaded guilty on charges of conspiracy to commit wire fraud. And charges are pending against another.

So DOJ knows it is wrong. Yet in the electricity title we have not put in strict enough language to prevent it from happening again.

One of the most recent criminal complaints filed against an Enron trader by the U.S. Attorney's Office says: Based on the facts, there is probable cause to conclude that between approximately June 1999 and January 2001 the Enron trader unlawfully conspired to commit and did commit acts in violation of the Federal law. There is probable cause to conclude that the trader committed the offense of wire fraud in violation to title 18, United States Code, and conspired to commit the offense of wire fraud in the northern districts of California and elsewhere.

The Department of Justice knows these acts are manipulative and illegal. The fact that they only have two people indicted so far—and we still don't have justice as it relates to Ken Lay; and it was the diligence of those on the west coast and Members here saying manipulation went on—bothers me; it has taken so long. So I certainly want to make sure there is no question that we think these activities are wrong and that something should be done about it. That is why we need tough language.

Now, this body did its job as it relates to the auditing of regulators and reform after Enron. This CRS report for Congress—basically that is part of the report about the Sarbanes-Oxley act—talked about how we stepped up and did our job as it related to the auditing and accounting practices of these organizations.

Now, why was that important? It was important because not only did ratepayers get gouged, but people counted on those companies and their truthful reporting in their businesses. And the investors investing in those businesses counted on that truthful reporting. We uncovered that there was a lot of manipulation going on there as well. There was a lot of misinformation about what really was the cash and capital of these companies and whether the investments by investors really should have been made, given that the long-term outlook of the companies was not based on real numbers but on these manipulated schemes.

So what did we do? We didn't repeal accounting laws that were on the books to protect consumers. We stepped up and said: Let's make this stronger. Let's get the Sarbanes-Oxley act in place. In fact, the act creates a new oversight board for auditors. It prohibits auditing firms from providing certain consulting work for auditing clients so there is no conflict of interest in who they work for. It requires the rotation of all the partners. It imposes new regulations on corporate boards and executives. It increases government oversight and criminal penalties. We took tough action as it related to the auditors. We protected the shareholders moving forward from having this kind of scheme from an auditing perspective happen again.

If we were so ready to jump on this issue as it related to the auditing practices and the accounting practices of these companies, and we protected the shareholders and the individuals who may have had pension plans or investments in these companies, why aren't we now going to protect the ratepayers who actually got gouged with the high cost of these contracts? Why aren't we going to say this is so egregious that we should never allow it to happen again; that we, the Congress, believe that we are no apologists for Enron? We are not going to condone market manipulation. We are going to say, just as we did with accounting rules and auditing rules, we are going to have in the Power Act the same message; that manipulating contracts is unjust and unreasonable and anybody who participates in market manipulation does not get to have free market power under the Power Act. It is simple.

Let me talk about what is in here because I believe Chairman DOMENICI and his staff probably did try to say that some manipulations happen and we ought to do something about it. But I don't think we have covered the full gamut of issues that need to be covered. The Domenici amendment refers to round-trip trading. Round-trip trading is simultaneously buying and selling electricity to stimulate both the amount of electricity trading that was going on and to stimulate and increase the price. So the Domenici amendment says round-trip trading is wrong. And that is good. It is good that we took one of these schemes and shot a hole into it and said this is wrong.

But there are many other schemes that are not covered under the Domenici title: Fat Boy, also known as Icing Load, to create real-time power markets. According to Enron's own memos dated December 6 and December 8, 2000, Fat Boy was ''one of the most fundamental strategies used by the traders.'' According to one, ''the oldest trick in the book'' and ''is now being used by other market participants.''

What Fat Boy did, when you boil it down, is Enron submitted false power supply schedules to the California ISO—the California organization in which power was bought and sold—and other market participants for the purpose of receiving payments when it didn't actually need the extra generation. So in essence Enron received untold millions of dollars for pretending to keep the lights on in the West when it really didn't need to. There is nothing in this current Domenici title that

prohibits Fat Boy from happening. Yes, you say, you can't lie to FERC. There is nothing in the act that says you can't lie to the California ISO, which is exactly what Enron did under the Fat Boy scheme.

That was the whole point of California deregulation. That is what people went to the legislature and sold them, just as they are trying to sell us. Hey, guess what, California. If you deregulate, market competition is going to drive down the price. And we will create this mechanism, the California ISO, which stands for the independent system operator. We are going to make this scheme where an independent system operator is going to get you cheap electricity. And all those people in the marketplace who want to sell power and sell it at a cheap price, we are going to drive down the price.

That is not what happened. The price went up. It escalated. So they defrauded the California ISO. There is nothing in this underlying bill that protects the ratepayers from having Fat Boy happen again because it does nothing to prohibit lying under these kinds of schemes to the California ISO or any other organization like that.

Richochet was also known as Ping Pong. The sole purpose of this scheme was to evade California's attempts to put price controls in place. Knowing that FERC wasn't really paying attention, they were given market-based rates. They said: Go out and see if you can drive down the price of electricity. And under this scheme, basically to get out of the price controls that California was trying to put in place and control, the traders, instead of trading within the State of California, would ship their power outside of the State and then ship it back in. Yes, that is right, just like the ping pong ball, back and forth on a ping pong table, pushing power to one side and pushing it back—Ricochet.

If we push it out of California, then we are not subject to those State regulations, and guess what. When we ship the power back in, we can ship it in at the price we want. That way we avoid the caps of the California ISO and the power exchange that is trying to enforce them.

So the prohibition on round-tripping in the Domenici bill does nothing to prohibit Ricochet or Ping Pong from happening again. This kind of practice of shipping out of State and shipping back in is not illegal under the Domenici title. But it will be under the Cantwell-Bingaman amendment if this body will adopt it.

Let me talk about Death Star for a second. That is the one, yes, renamed Cuddly Bear. I don't care what you call it, there is no way the American public, the public in Washington State, doesn't know that this wasn't a cuddly bear. This was an unbelievable scheme that has ruined our economy. The essential strategy of Death Star was for Enron to earn money by lying about its transmission needs, scheduling transmission in the opposite direction of the congestion. No energy, however, is actually put on the grid or taken off, according to the company's own memos.

So wait a minute. We were saying to people this is what is going to be on the grid, but then we don't really put it on the grid.

The U.S. Attorney's Office described in a June court paper that Enron submitted schedules to the ISO that pretended to move the electrons owned by Enron, but in reality it didn't. Because of this, it appeared to relieve congestion. So the ISO awarded Enron congestion relief payments. Basically by pretending it was putting power out there to relieve congestion, which it really didn't, the ISO gave them relief payments. The ISO was deceived because part of the looping scheme was outside of California and, therefore, it couldn't be detected, thereby costing more money.

According to the Department of Justice, senior Enron traders denied they were doing this practice or violating any market rules. So basically what we are saying is that there were people at Enron who told other fine people who probably worked at Enron and who were trying to do their jobs, there is nothing wrong with this. This is totally OK to do.

One of the trading managers was smart enough and said: We are worried that the details of the strategy would be leaked to the ISO and other power companies or the public. One of the consequences of his concern was that he was instructed to refrain from calling this Death Star. That is when they said: Gee, employees are getting nervous about this scheme; they don't think it is right. Let's change the name to Cuddly Bear and maybe everybody will be OK with it. Well, we are not OK with it.

The underlying Domenici electricity title does not prohibit Death Star from happening again. Only the Cantwell-Bingaman amendment will do that.

Load shifting was another ploy. To employ this tactic, Enron would distort its transmission schedule to create the appearance of congestion, or knowingly increase the congestion cost to all market participants. Again, more misinformation. The underlying Domenici title says nothing of falsified information provided to the FERC. Well, FERC already has language in there about reporting. It didn't get them to stop Enron from following these practices. It doesn't require or make illegal any of these practices of providing misinformation to the California ISO.

Remember, the California ISO was an organization that basically was created after deregulation. After deregulation, people went to the California Legislature and said: We will create a mechanism where the marketplace buys and sells power at a cheap rate. We will let the market do it.

Under the California ISO, the independent system operators basically were supposed to help control price. That is where the misinformation was, where the lying and fabrication of information took place. This underlying bill does nothing to protect or say that those kinds of activities to the California ISO, an independent system operator, are illegal. It has no teeth as it relates to that. So nothing in this underlying Domenici electricity title will protect us from load shifting. The Cantwell-Bingaman amendment will.

Get Shorty. Like many Americans, I thought this was a title of a movie. I thought it was supposed to be a joke. But in my State it was not a joke to the ratepayers who actually had a premium price increase. Basically, what they did was they gambled that it would be able to find service at a cheaper price the next day. Enron's own memos admitted that ''this was obviously a sensitive issue because of reliability concerns.'' Indeed, the company stated that it would be ''difficult to justify our position if the lights go out because these services were not available, and the reason was because we were selling them without actually having them in the first place.''

They basically were saying: We are going to have a scheme where we are going to say there is power available when there is not. And then when the lights went out, they knew they were going to have concerns. They knew. How they could think the west coast economy would not be reached by this havoc being laid upon them. I cannot understand. I cannot understand the corporate greed that goes into this kind of thinking—that somehow this kind of marketing strategy would be good for California, good for Washington, good for America, good for corporate business, good for our confidence as a country—confidence that we as a government are going to say this kind of manipulation is wrong. It has created a huge deal of unrest in the West. Nothing in the Domenici electricity title prevents Get Shorty from happening.

Wheel Out. I am not sure what marketer came up with this one. Enron would submit schedules for a transmission on line they knew was out of service. In doing so, the company would earn extra payments for their trouble. It is not even available. It is sort of like a cab driver heading straight for a traffic jam in order to keep the meter running on an unsuspecting tourist, basically saying: I am going to get you into congestion and it is going to cost you a lot. The poor passenger in the car doesn't know there is a quicker route, a cheaper way, a more expedient way to control the cost. But unlike a cab ride, the costs of this are not in the tens of dollars but in the millions of dollars, and the cost to our economy has been in the billions of dollars. There is nothing in the Domenici underlying amendment that would prohibit the Wheel Out strategy from happening again.

The Cantwell-Bingaman amendment says that the Wheel Out strategy is

manipulation of the market—it is manipulation. Under the Federal Power Act, it cannot be just and reasonable that companies that deploy these kinds of practices should not have market-based rates.

I hope there are not any more schemes. I hope I don't have any more charts because this is enough. This is enough of the tactics that were deployed by a company that basically thought that making a few more dollars through manipulative practices was somehow OK to do.

I read some of those quotes from employees at Enron who said: I don't think this is right; I think this is a concern. Yet they continued.

So the Cantwell-Bingaman amendment, which is supported by Senators HOLLINGS, MURRAY, BOXER, FEINSTEIN, and others, simply says let's put into the Power Act that manipulation is not just and reasonable.

We have had lots of support: The Northwest Public Power Association, Northwest Energy Coalition, AARP, Consumers Union, International Brotherhood of Electrical Workers, Consumers for Fair Competition, National Association of State Utility Consumer Advocates, Union of Concerned Scientists, U.S. Public Interest Research Group, and many other organizations, such as members of the AFL–CIO, and many people who are concerned about the economic impact of manipulation happening prospectively on natural gas.

Why won't somebody just take this experiment that happened in California and the West and say, OK, we will—with the current Domenici language, Congress barely smacks the hands of those Enron traders. Gee, only one of them went to jail. I guess you have to be smart enough not to be the one who gets caught with a memo on an electronic file on your computer, and, guess what? You will get out of this. So let's take this same kind of scheme and deploy it for natural gas.

That is what this amendment is about. This amendment is about saying that natural gas in the future will have better protections of consumers in mind regarding potential rate increases. So, if we have an increase in natural gas prices, maybe because of shortage of supply, guess what, we will really know that it is about shortage of supply. We will really know. We will be able to tell consumers in America that we really know it was about not having enough supply; it was not because some natural gas producer had tons of supply but manipulated the market through a variety of schemes and somehow gouged consumers, and that is why your rates are higher. Can we not give the American consumer that kind of confidence about our energy? I sure hope we can.

This issue has a real impact on people, and I know my colleagues are in the Chamber, and they want to speak, but I wish to share one letter from an 11-year-old girl whom I met almost a year and a half ago. I did not know at the time she had sent this letter, but she lives in a region of the State where they have had a 71 percent rate increase—a huge increase.

This 11-year-old girl sent an emotional letter about how the crisis was affecting her family, that her mom was living paycheck to paycheck. That actually the job her mom had was dependent upon affordable electricity. She wrote:

> This is the first time I've lived in a house. This is the most important thing in my life, that we get to live in a house. Please listen to what might happen to hundreds of kids, including myself, when my mom might lose her job and we might have to move out of our house.

The impact is being felt by young children, not just by the parents who might lose their job. Not just by the Snohomish County ratepayers who had 44 percent disconnect notices, but by young children who are fearful that their families are not going to make it because these schemes caused these rate increases that we are stuck with for years and years.

There is somebody sitting in their office somewhere in America saying: Gee, why don't you just sue those Enron people? Why don't you just sue them and tell them that under the Federal law, they cannot manipulate these contracts? I think people in America would be surprised to know that Enron is suing these utilities. Enron is turning around and suing these utilities and forcing them to pay these rate increases. They are suing the Snohomish County public utility district, saying: That contract—that has been manipulated—that you signed for 5 years of power, even though it is manipulated and you are paying a 54-percent increase, we are not letting you out of that contract; we are suing you.

This is the only body that can protect people in the future. It is only the Senate and the Congress that can say: This manipulation is wrong. This manipulation, moving forward, is wrong. Then ratepayers in my State in the future, if this happens, might have a chance.

We have had letters from senior citizens who are trying to live on a fixed income. This burden has made them make decisions about how they are going to live in the future. One woman from Okanogan County said: My friends, myself, and my neighbors cannot afford the higher rates:

> I am in a total panic because I am disabled and barely can pay for heat now. With these rates going up as much, it will make it a life-threatening situation. This will become a public health disaster. To make matters worse, many businesses are planning on shutting down here due to the terrible economy and the power costs. This is putting the last nail in our coffin in a dire economic situation in Omak, WA.

That is what the ratepayers in my State think. Not just: Oh, please, Senator CANTWELL, Senator MURRAY, please, Members of Congress, smack the little hand of the Enron people and tell them that was a no-no. They are saying these are dire circumstances, these are life-threatening situations, these are public health risks. We ought to stand up today and say this kind of market manipulation is not just, it is not reasonable, it is not in the public interest, and these variety of schemes from Ricochet to Fat Boy to Death Star are not legal, they are examples of manipulation, and companies that practice such manipulation should not be given market-based rates.

I could go on about this issue and talk about how our Northwest economy has been impacted by the number of jobs lost. I know several of my colleagues wish to speak on this issue, and I am going to give them the opportunity because I know they have been engaged in such dialog and speaking out on this issue. I want to give them a chance to continue to express their opinion on this issue as well.

I do not know if the Senator from Iowa wants to have a few minutes now, but I am happy to yield to him—for how much time?

Mr. HARKIN. For 10 minutes.

Ms. CANTWELL. For 10 minutes of the time I have remaining, Mr. President.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. I thank the Senator from Washington for yielding to me. I want to help her on this amendment. I ask unanimous consent to be added as a cosponsor to the Cantwell amendment.

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

Mr. HARKIN. Mr. President, after listening to Senator CANTWELL's exposition of the crimes, manipulations, and the fraud perpetrated on the American people by the Enron Corporation, it is, again, amazing to this Senator that we have not done something about this situation before now. I am amazed this is not taken care of in the underlying bill.

We know that what Enron did can happen again if we do not address it. If we do not ban it, as Senator CANTWELL does in her amendment, it will keep happening over and over.

In the 1930s, at the height of the Great Depression, Congress realized one of the most important factors was the collapse of the electric utility industry. It turned out this basic industry had been built on fraud after fraud, shell game upon shell game, and when economic troubles hit, it collapsed like a house of cards.

Congress's attempt to prevent this from happening again was the Public Utility Holding Company Act of 1935, otherwise referred to around here as PUHCA. That was our attempt in the 1930s to prevent what was happening then from happening again, with all the frauds and the collapse of the house of cards of the electric utility companies.

Then we go forward 60 years to about the midnineties, and we were told that

the restructured electric utility industry would be built upon markets and trading, that the markets would ensure the soundness of the industry, that the PUHCA now was just a hindrance to cheaper power, more available power, for all of our consumers; that PUHCA was not only irrelevant but probably even a hindrance.

Enron was both the leading participant in and the leading advocate of this new scheme of electricity markets. They were not the only one, but they were the leading one. They were the ones that had the closest ties to people in Congress and to the Bush administration.

It turned out that Enron, like the electric companies of the 1910s and 1920s, was also built upon frauds, shell games, and out-and-out criminal activity. When troubles hit, Enron, too, collapsed like a house of cards. Again, this is what we saw in the 1930s.

As Senator CANTWELL has brought out, we had a whole new set of terms of art that entered our vocabulary: Fat Boy, Get Shorty, Death Star, and many more. Enron had legions of employees who were paid to dream up ways to defraud the public and manipulate prices of electricity and transmission capacity. They ranged from affiliate structures, creative loans, trading strategies.

We have heard about Wheel Out, about how they tried to sell electricity through nonexistent lines. Again, Enron was not the only one. FERC has found dozens of companies were involved in fraud, that market manipulation was epidemic.

The whole energy industry still has not recovered. In fact, the whole economy is hurt by investors who have lost their trust in American corporate management.

Now we see that PUHCA, the Public Utilities Holding Company Act, was, in fact, irrelevant to Enron schemes. Why? Because FERC had determined that Enron was exempt from the law. Even that was not enough for Enron's chairman Ken Lay, who later threatened to remove the FERC chairman if he did not back his beloved markets and schemes more strongly.

Where is Ken Lay today? Is he in prison? Is he behind bars? Well, of course not. I understand he had to sell a couple of his big houses, one in Colorado and one someplace else, but he is out free. He may be on the French Riviera for all I know. I do not know where he is. He made a lot of money. He sacked it away and he is living a grand life.

Now I guess a couple of his underlings went to jail because they got caught, but Ken Lay, the brains behind the whole scheme, the person who threatened to remove the FERC chairman, is scot-free. So much for justice in this regard.

At this point I doubt this Justice Department is going to do anything to really go after Ken Lay because of his closeness to the Bush administration. But Enron showed more clearly than any episode since the Great Depression that strong Federal oversight is needed in the electric industry; that fraud hurts consumers, investors, and our whole economy.

The Domenici substitute bans one particular trading scheme, round-trip trading, but it leaves all the other schemes with these names we have heard of from Star Wars. It would still leave them there, and Senator CANTWELL just laid all of those out for us. So it would leave all of those untouched.

Why just ban one and leave all the other ones there? Well, as one step to restoring confidence in the energy industry and thus getting the economy moving again, we need to ban all such market manipulation. That is what the Cantwell amendment does and that is why I support it.

The Presiding Officer is from the State of Missouri, the home State of one of my political heroes, Harry Truman, a great Democrat. Harry Truman once said when he was campaigning in 1948 in the Midwest and talking to a bunch of farmers who had lost a lot in the Depression and he was telling them that his opponent, Mr. Dewey, was going to turn the clock back and they were going to get rid of all of the support they had had for agriculture. Truman uttered one of his great lines. He said: How many times do you have to get hit on the head before you figure out what is hitting you on the head?

Well, I would like to take Harry Truman's line and apply it to us and the electricity industry. How many times do we have to get burned by fraudulent schemes in this industry before we figure out what we ought to do about it and ban all of these activities? How many times do we have to get hit on the head before we figure out there are deep problems in the electricity industry and they have to be solved? Because if they do not, it is going to continue to hurt our economy.

Our economy right now is in terrible shape. I will divert just a little bit from this bill for a few minutes if the Senator does not mind.

The PRESIDING OFFICER. The time of the Senator from Iowa has expired.

Mr. HARKIN. I ask for an additional 5 minutes.

Ms. CANTWELL. How much time is remaining?

The PRESIDING OFFICER. The Senator from Washington has 32 minutes remaining.

Ms. CANTWELL. Five minutes.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. HARKIN. Mr. President, in March of 2001, President Bush visited Western Michigan University to stump for his tax cuts. He said:

> . . . we can proceed with tax relief without fear of budget deficits, even if the economy softens.

Of course, today we know that what the President said that day was not true, and I think it is time now that the White House comes clean on this issue. We do not know whether the President was aware at the time he made this statement that it probably was not true, but somebody should have known.

Surely, someone in this administration knew that trillions of dollars of tax breaks, combined with a downturn in the economy, would lead to massive budget deficits.

Following that speech, this administration gave trillions in tax breaks to the wealthy, the economy softened, and we have gone straight from record projected surpluses to record projected deficits and debt. In fact, just 2 years later, the United States now faces massive, prolonged, record-setting projected deficits—over $450 billion this year, $475 billion next year, and trillions of dollars of deficits over the coming years.

So, what the President said that day in 2001 was in fact woefully false.

Now, I know the other side is going to accuse me of making a mountain out of a molehill on this issue. They will say I am just taking 16 words from one speech and blowing them out of proportion in order to challenge the President's credibility. They will ask: How can 16 words in one speech be the test of a President's credibility?

Yes, I can hear the President's defenders already. They will say: This speech was cleared by the Council of Economic Advisors. It is not the President's fault. He relies on the technical advice of experts on these matters.

Maybe that is the case. Maybe the President thought he was telling the truth when he said we could reduce Government revenues by huge amounts without causing deficits. But somebody should have known it was not true.

If not one in this administration knew that passing enormous tax breaks for the wealthy, combined with an economic downturn, might lead to exploding deficits, that does not exactly inspire a lot of confidence, either.

The President's defenders on this issue may also say:

> Well, actually, the statement is technically accurate, and did not mislead anyone. After all, it says we can proceed without fear of budget deficits. It does not say we will not actually experience massive budget deficits. It just says we do not need to fear them.

Unfortunately, that explanation will not work, either. As Alan Greenspan has reminded us repeatedly, large deficits do matter, and they are something to be concerned about.

In truth, it is pretty obvious that the White House intended to communicate that the President's massive tax cuts would not create corresponding massive deficits. It is now apparent that someone misled the public in that speech by the President.

''Well, but even if what the President said was not true,'' I can hear his defenders say, ''it does not matter. What matters is that we did what we really

set out to do. We provided the most affluent Americans with large tax breaks. We rewarded our largest campaign contributors with millions.''

Now, I hope that is not the real explanation. But that is what actually happened.

These days the administration does not want us to pay too close attention to what the President actually says. In fact, sometimes they would rather we disregard it altogether, especially when it is only 16 words. They say it does not really matter.

In this case, as in others, what the President of the United States says does matter. The President needs to come clean about these remarks. He needs to admit his mistakes. Otherwise we are left with the distinct impression the President, his advisers, or both, purposefully misled the American people about the economy in order to get tax breaks for the wealthy.

If they were a mistake, these 16 words, then the President ought to admit it. The resulting policy is driving our economy into the ground. If they would acknowledge the statement was wrong, hopefully we could all come together to remedy the President's economic malpractice and get the economy moving again.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. CANTWELL. Mr. President, I yield 5 minutes to the ranking member, Senator BINGAMAN, who is a cosponsor of my amendment. He has worked hard in bringing attention to everyone about this issue of market manipulation.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank Senator CANTWELL for yielding time on this amendment. I am a cosponsor of the amendment. I commend her for offering the amendment and focusing the attention of the Senate on this important set of issues.

The electricity title is perhaps the most complex part of this entire Energy bill. We recognize and understand there is a lot of complexity in writing a provision or a title that governs the regulation of electricity.

However, the issue that the Cantwell amendment deals with is not complicated. It is extremely straightforward. Frankly, I am at a loss to understand why we cannot get agreement between Democrats and Republicans in the Senate to go ahead and close this loophole which has become so clear to everyone in the country who has paid any attention to energy prices and energy markets in recent years.

Just a year ago, newspaper stories had almost daily headlines about power marketers manipulating the market in California and in the Northwest States, Washington and Oregon, in particular. Unfortunately, it seems something has been forgotten since those stories were written a year ago.

Senator CANTWELL has outlined very dramatically and effectively the parade of these schemes devised to defraud utilities—and ultimately to defraud consumers—that have resulted in consumers paying substantially more every month when they pay their utility bills. They have very exotic names. But the truth is, her amendment is extremely straightforward.

Let me read the operative part of this amendment and ask how this can be objectionable to anyone.

> It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may promulgate as appropriate in the public interest for the protection of electric ratepayers.

What is wrong with saying it is illegal to engage in manipulative and deceptive practices? I cannot understand why we are spending so much time debating an issue that seems so straightforward to me.

The Domenici substitute does prohibit round-trip trades. And they should be prohibited. Unfortunately, it does not go the next step and do exactly what I just read, which the Cantwell amendment would do. We need to add this provision. We need to be sure the tools are there in the Federal Regulatory Commission to do this job in the future.

I sympathize with the statements the Senator from Washington has made about the inaction of the Federal Regulatory Commission in the early months of the Bush administration. There was a period when prices were going through the ceiling, particularly on the west coast, and we were not seeing action out of the Federal Regulatory Commission as we should have. That was corrected, in my view at least. It was corrected after the new chairman came in, Chairman Wood, and began to assert the authority the Federal Regulatory Commission had and should have been asserting all along to go ahead and step in.

This is an additional tool. We should give FERC this tool and make it clear in the law that all of these deceptive and manipulative practices are illegal. Once we make that clear, we are in a position to hold the Federal Regulatory Commission accountable if, in fact, manipulative or deceptive practices occur in the future.

This is not an academic inquiry. These practices resulted in increased utility bills for many Americans. The Senator from Washington should be commended for stepping in to ensure that does not recur in the future.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator from New Mexico has expired.

The Senator from Idaho is recognized.

Mr. CRAIG. I yield myself 5 minutes of our time.

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

Mr. CRAIG. I come to the floor this morning frustrated in part by some of the debate that has occurred on the floor. The Senator from Washington and I agree the ratepayers of the Pacific Northwest have been injured by a dysfunctional California market that was badly designed and badly conceived from the beginning. In fact, it got so bad and it has been so dramatically treated in the wrong political way that we have a gubernatorial recall going on in the State of California right now.

Finally, the ratepayers of California got it figured out. The politics of California destroyed the market and the ratepayers of Washington, Oregon, and Idaho had to help pay for it.

To come to the floor this morning and say nothing is going on and nobody is being prosecuted is, in fact, wrong. It is not telling the whole truth. The title we have in front of us, the electrical title, still allows thorough and aggressive prosecution of those who violate the law.

Where is the regulatory gap that is being talked about this morning that the Senator from the State of Washington, by her amendment, might change? Here are the agencies involved at this moment: The President's Corporate Fraud Task Force, the Federal Bureau of Investigation, the Federal Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the United States Postal Service, and numerous U.S. Attorney's Offices. Their cooperative enforcement activities have focused on investigations of possible round-trip trading, false reporting, fraud, manipulation of energy companies and their affiliates, employees, and their agents.

There is a list of some of the actions taken on various Federal agencies. Let me run through them:

Starting on July 16, 2003, the FERC administrative law judge recommended Enron be required to refund $32.5 million for violating section 205(c) of the Federal Power Act.

June 25, 2003, FERC revoked the market-based rate authority of the Enron power marketing entity.

June 3, 2003, John M. Forney, manager of the Enron real-time trading desk during 1999 and 2000, was arrested and charged with wire fraud and conspiracy.

May 1, 2003, new criminal charges were filed against former Enron chief financial officer, Andrew Fastow, including charges of security fraud, insider trading, falsification of Enron accounting records, tax fraud, and self-dealing.

I could go on, and I have numerous lists. But that is Enron.

Let me go to Reliant Resources: May 12, 2003, Securities and Exchange Commission issued a cease and desist order against Reliant Resources and Reliant Energy arising from Reliant's admission in May of 2002 that it conducted round-trip trading for the purpose of artificially increasing trading volume.

Dynegy, another energy company, June 12, 2003; the U.S. Attorney's Office for the South District of Texas charged three former Dynegy employees with conspiracy, securities fraud, mail fraud, and wire fraud in connection with round-trip energy trades, and the Securities and Exchange Commission also filed civil securities fraud charges against the former employees.

How about El Paso Corporation? May 9, 2003—in May of 2003 FERC deferred action in a pending proceeding stemming from allegations of affiliate abuse and anticompetitive impacts on the delivered price of gas and the wholesale electric market in California.

It goes on and on. I have four more pages of about seven items per page of actions that have already been taken against these companies.

The question is, Does the electrical title that we have before the Senate today create a regulatory gap? The answer is quite obviously no.

Does it change the problem in the State of Washington? Washington got stiffed by the old law and the old process. Idaho's ratepayers got stiffed by the old law and the old process. And the citizens of California have finally said: We have a Governor who will not do anything about it. He put us in a huge deficit problem, and we are going to throw him out of office. And that is what that recall is about. It all stems from a phenomenally dysfunctional electric market that the people of California created, and they created it by deregulating wholesale and regulating retail and in came the scammers and the scammers are now being prosecuted as they should be.

I do not believe the amendment is necessary. I believe the title in this bill on electricity appropriately addresses this. There is transparency. There is no regulatory gap.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Washington.

Ms. CANTWELL. Mr. President, I know my colleagues from the other side of the aisle want a chance to use up some of their time. I do not know whether the chairman wanted to speak now. The Senator from Louisiana was going to be yielded a few minutes, also. I do not know if the chairman wanted to use time.

Mr. DOMENICI. Mr. President, how much time does Senator CANTWELL have left?

The PRESIDING OFFICER. The Senator from Washington has 21 minutes remaining.

Mr. DOMENICI. The Senator from New Mexico has a half hour less than the Senator——

The PRESIDING OFFICER. The Senator from New Mexico has 24 minutes remaining.

Mr. DOMENICI. I inquire if the Senator from Louisiana desires to speak?

Ms. LANDRIEU. Yes, Mr. President, I desire to speak both in support of the chairman——

Several Senators addressed the Chair.

Ms. CANTWELL. I yield to the Senator from Louisiana 5 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will yield and speak after Senator LANDRIEU.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 5 minutes.

Ms. LANDRIEU. Mr. President, I would like to ask, since it seems there is enough time, if I could have 10 minutes. I ask unanimous consent for that.

Ms. CANTWELL. The Senator is yielded 10 minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 10 minutes.

Ms. LANDRIEU. Mr. President, I rise in strong support of the Domenici substitute electricity amendment. There have been few other parts of the Energy bill that have been more controversial or that have been the subject of more debate than the electricity provisions. The Domenici amendment is a well-crafted compromise that represents some of the best thinking on electricity deregulation. It is worthy of the support of all Senators because it addresses those issues that need to be addressed and does so in a fair and balanced way.

The Domenici amendment deserves the bipartisan support of the Senate because it provides Federal agencies such as the Commodity Futures Trading Commission and Federal Energy Regulatory Commission with new tools to prevent and penalize anti-consumer and manipulative behavior, including false price reporting and simultaneous trading of the same volumes of electricity between two entities, known as round-trip trading. It encourages distributed and renewable generation through a nationwide net metering program; in other words, it allows entities that use solar power or small gas generators to put excess electricity back into the grid.

It moves the FERC's refund authority back to the filing of a complaint. Currently there is a 60-day grace period before refunds can be issued—the proposed language removes the 60 days. It expands FERC's merger review authority by increasing the number of transactions that will be subject to FERC review and approval; in addition to utilities FERC now will be able to review mergers of transmission assets. This prohibits so-called ''slamming'' and ''cramming.'' This concept comes from the telecom industry. Slamming is when retail customers have their service switched unknowingly, for example, AT&T to Sprint. Cramming is when retail customers have items added on to their bills unknowingly, for example, call waiting.

It requires the FTC to issue rules protecting the privacy of electric consumers; and the customers information cannot be shared without their consent. It requires FERC to issue a new policy establishing conditions under which public utilities may charge market-based rates. This policy is to consider consumer protection, market power and other factors deemed necessary by FERC to ensure that market based rates are just and reasonable. FERC cannot switch to market base rates if a monopoly exist or else will have to employ cost based rates.

Let me talk a few moments about the consumer protection provisions of this amendment. This is an area where some of my colleagues say the Domenici amendment does not go far enough. I believe that the provisions of the Domenici amendment are a significant first step in the right direction. Let me tell you why. First, the Domenici amendment would require FERC for the first time to issue rules to establish an electronic information system to provide information about the price and availability of wholesale electric energy and transmission capacity. Transparency is key to well functioning and fair electricity markets and this amendment will significantly improve transparency. The amendment further seeks to ensure market transparency and integrity by prohibiting the filing of false information regarding the price of wholesale electricity and availability of transmission capacity.

Second, the amendment would prohibit specific manipulative conduct and practices, including simultaneous trading of the same volumes of electricity between two entities—round-trip trading.

Third, the Commodity Futures Trading Commission is given important new authority that will improve market transparency and further strengthen anti-manipulation powers. These new powers include a strengthening of the CFTC's authority to investigate and punish fraud and manipulation in the reporting of electric and natural gas prices and an expansion of the CFTC's general anti-fraud authority to cover certain on-line trading platforms, like those run by Enron.

Fourth, the amendment substantially increases criminal penalties for violations of the Federal Power Act to $1,000,000 per violation and civil penalties are substantially increased as well.

Finally, the refund effective date for violation of the ''just and reasonable'' pricing standard under the Federal Power Act is moved back to the date of the filing of a complaint, thus giving consumers a greater likelihood of receiving refunds where prices are found not to be ''just and reasonable.''

In short, this is a good consumer protection package and it is one that is worthy of our support. The Domenici amendment also makes certain long-overdue reforms to our Nation's outdated electricity laws. For example, the amendment would carefully extend open access requirements to transmission systems owned by all large transmission-owning utilities so that

larger, more seamless regional wholesale electricity markets can be created. It would establish new transmission pricing policies to help ensure that those benefitting most from new transmission investments are obligated to pay for them. It reforms PURPA while protecting existing investments, contracts, and expectations. Lastly, it repeals PUHCA, while ensuring that State and Federal regulators have access to the books, records and information needed to ensure informed regulatory action.

Mr. President, this is a good amendment. I urge all my colleagues to support it.

However, there are some improvements that should be incorporated. One such example would be Senator CANTWELL's amendment that places a broad prohibition on all manipulative practices in electricity markets.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. CANTWELL. The Senator from Oregon would like a few minutes. I am happy to yield to the Senator from Oregon 5 minutes.

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

Mr. WYDEN. Mr. President, I thank the Senator from Washington, and I also thank the Senator from New Mexico for his courtesy.

I rise in strong support of the Cantwell amendment. What we have seen in the Pacific Northwest with respect to the manipulation of our energy markets is that the position of the Federal Energy Regulatory Commission has simply been see no evil, hear no evil, and ignore evil.

The reason I have come to that conclusion is that when the Federal Energy Regulatory Commission Commissioners came to the Energy Committee in March to discuss with us the question of manipulation of the Pacific Northwest market, I read excerpts point by point from the Reliant Energy trading transcript to the Commissioners. I read to them pretty much like a bedtime story. Here is the portion of the transcript that I read to the Commissioners. It involves the Reliant manager.

He says:

How did it work today?

Reliant Trader: 129. We're talking about the power exchange.

Reliant Manager: Yeah. I saw that.

Reliant Trader: Then we trade up to 1.31 for the third quarter next year.

Reliant Manager: Sweet.

Reliant Trader. We even had a senior manager down here.

Listen, if you would, Mr. President, and colleagues to this.

The reliant trader said:

He just wanted us to know that everybody thought it was really exciting that we're gonna play some market power.

After reading this transcript, I asked the Commissioners, How can you reach the conclusion after what I have read to you that overpriced contracts based on manipulation toward market prices should not be avoided or at least reformed? I pointed out it was clear just on the basis of that short excerpt that the traders were manipulating long-term prices when they were talking about the third quarter next year.

What is more, the Federal Energy Regulatory Commission staff's investigative report issued earlier this year found that there was a particularly significant correlation between spot prices and shorter 1- to 2-year contracts. Despite being caught in the act with a smoking transcript, despite having it read to them like a bedtime story, despite the Federal Energy Regulatory Commission's staff findings, the majority of the Federal Energy Regulatory Commission—specifically Commissioners Wood and Brownell—still cannot see the connection between these caught-in-the-act, smoking gun memos and transcripts and the higher energy prices my constituents are now paying because of the market manipulation detailed in these transcripts.

I am pleased to be able to have just a couple of moments here. But it seems to me if the Federal Energy Regulatory Commission is unwilling or unable to police long-term energy markets in cases like this where people in the Pacific Northwest are being ripped off in broad daylight, it is time for the Congress to step in. That is why the Cantwell amendment is so important.

I urge my colleagues to back the Cantwell amendment and outlaw the kind of manipulation that I have read to the Senate today and that I read to the Energy Committee. Unfortunately, the Federal Energy Regulatory Commission is unwilling or unable to address it.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DOMENICI. Mr. President, we will soon have a unanimous consent request that will set up another amendment of the same class to follow this afternoon immediately after the vote on the judge.

In the meantime, I have around 20 minutes to speak. I would like very much to be as short as I can. But first, let me say to fellow Senators that I am very proud of the electricity amendment, with 13 bipartisan cosponsors, which is pending. Does anybody think we would have worked on that for days on end and not have provisions in it that take care of the problems that Senator CANTWELL is talking about? Is it conceivable that I would come to the Senate floor with what we perceive to be a great American reform of an electricity system from top to bottom and leave out protection for the kind of people she is speaking of? I will answer my own question by saying that is impossible. It is impossible because we wouldn't let it happen. Second, it is impossible because it didn't happen.

Having said that, I understand full well—and I have explained privately to the very distinguished Senator, Ms. CANTWELL. As I talked with her, I could just see how her very being was upset with what has happened to her constituents because of the pricing that went wild in the State of California for which she got the aftermath in her State. But it is not only her State and her constituents, it is a whole section of the country which, in a sense, got it in the neck because of California.

While I am at it—I intended to do this later in my remarks, but let me do it right now—there was a lot of talk about what happened to bring those prices to that outrageously wild system that ended up falling over on to her constituents. And the word ''manipulation'' was used and that even FERC said, in a report, manipulation caused it.

Let me suggest, the Senator from New Mexico has done everything he could to try to find out what the real experts say caused it, and none of them say it was manipulation that was at the heart of the problem of prices going outlandishly high on the west coast. As a matter of fact, whether you ask the Federal Reserve Board or whether you look at the FERC report, the root cause is found not to be—not to be—manipulation. The meltdown was a significant supply shortage and fatally flawed design statutes.

Let me repeat, the general consensus of those who have looked at it carefully say significant supply shortfall added to a fatally flawed design market and that blew up the California market and, thus, its surrounding States.

On March 26, 2003, FERC issued its ''Final Report on Price Manipulation in Western Markets.'' Senator CANTWELL believes the report proves there was manipulation. However, not everyone shares that view.

As a matter of fact, the Cambridge Energy Research Associates, CERA, is considered one of the top, if not the top, energy market analysts in the world. Daniel Yergin, the chairman of CERA, is the most respected expert in energy policy and the author of the ''Prize,'' the Pulitzer Award-winning book on the global oil market.

CERA noted that FERC ignored the natural gas and electricity supply shortages and assumed scarcity was attributed to manipulation. It was scarcity first, and then it was flawed design statutes which permitted the scarcity to go berserk.

Now, that is aside from the question.

Let's get back to the issue of the bill and whether we would bring before the body a bill that we would ask the entire Senate to support—that I am very hopeful, by the time we are finished, will get in excess of 65, 70 votes—that does not protect the citizens from what happened on the west coast.

Now, this amendment addresses the Federal Power Act and the Natural Gas Act in the following ways:

No. 1, it establishes an electronic information system at FERC to enhance market transparency.

No. 2, it increases criminal and civil penalties under the Federal Power Act and the Natural Gas Act.

No. 3, it enhances FERC's refund authority.

No. 4, it requires FERC to issue regulations establishing conditions under which utilities can charge market-based rates.

No. 5, it prohibits the filing of false information.

And, last, it prohibits round-trip trading.

Further, the so-called Domenici amendment—that is the master amendment we are operating under that I have asked parenthetically of myself: Would I bring it here without protecting for the future events that are being alluded to by the distinguished Senator who is worried about her State—that Domenici amendment enhances the role of the Commodity Futures Trading Commission to provide oversight over electricity and natural gas.

The Senate, in my humble opinion, should reject amendments—all of them—to the electricity title of the bill that would affect FERC's and the CFTC's flexibility to react and deal with bad actors and upset further the already beleaguered utility industry's ability to respond to a changing market.

Now, I do not want to take a lot of time because, frankly, I am not sure, when we go on forever, that anybody listens. But I want to tell you that even without the so-called Domenici Modernization Act, the markets are being forced to respond, because FERC is taking action in the form of initiatives to protect electricity consumers, increase market transparency, and strengthen the regulation of electricity markets at the wholesale level.

They have proposed to identify more clearly transactions and practices that would be prohibited under electricity sellers' market-based rate tariffs and gas sellers' blanket certificate authority. These new market behavior rules would prohibit market manipulation or attempts to manipulate the market through activities such as creating and relieving artificial congestion.

They have proposed to require electricity sellers to operate and schedule generating facilities in compliance with the rules and regulations of the relevant power market.

They have proposed to require sellers to provide complete, accurate, and factual information in all communications with FERC, RTOs, ISOs, market monitors, and other similar entities. They have proposed measures to assure the accuracy of electricity and natural gas price reporting.

They have established a new Office of Market Oversight and Investigations as part of a stepped-up enforcement and audit program.

And I could go on.

Clearly, they are enforcing the law. They are taking out after those who are causing this market to react other than in a normal market way. And we will add to that authority in the bill that is before us which does not have to be amended.

The Commodity Futures Trading Commission has aggressively prosecuted fraud and manipulation in energy markets. They have committed 25 percent of their enforcement staff to conduct investigations into misconduct in energy markets.

CFTC's existing authority empowers it to prosecute fraud and manipulation. Under the authority of the Commodity Futures Trading Commission, they have filed civil action against Enron and a former Enron vice president for manipulation of prices in natural gas markets. They have filed civil action against Enron for operating an illegal futures exchange. They have filed civil action against El Paso Merchant for false reporting and have a $20 million settlement. And they have filed civil action against Dynegy Marketing for false reporting and have a $5 million settlement. They have filed civil action against Encana Trading for false reporting and Williams Trading for false reporting, both with a $20 million settlement.

Criminal actions have been filed, and I have a complete list of those. Enron's former head of CA trading pled guilty to conspiracy.

We don't need further amendments beyond the Domenici amendment that is pending to be sure the constituents of the distinguished Senator from the State of Washington are protected. They are protected. All we do by adding more is making the market more difficult. We would accomplish little but perhaps to say to ourselves we have done much.

The Natural Gas Supply Association, the Interstate Natural Gas Association, and the American Gas Association have all endorsed the market manipulation provisions in this amendment we call the Domenici amendment. I believe it is right as it is. It need not be changed.

Mr. President, let me just generally talk about where we want to go. Soon we will have the unanimous consent request in writing.

I say to the Senator, maybe we can just recite it here since you and I know it.

The ACTING PRESIDENT pro tempore. The assistant majority leader.

Mr. REID. Will the Senator yield?

Mr. DOMENICI. Surely.

Mr. REID. Mr. President, the next amendment we will offer is an amendment of the Senator from Wisconsin dealing with the electricity section. He has agreed his time on it will take approximately a half hour. Senator FEINGOLD is usually quite concise. The problem is that if we lock in this time agreement, people coming and wishing to speak on other subjects would not be able to do so. We have no reason to think anybody is going to or not going to. We don't want to have those time constraints. We are going to offer the next amendment. It would be the Feingold amendment.

Mr. DOMENICI. People might want to speak to which amendment? To the amendment you were referring to?

Mr. REID. Well, to be very direct to the Senator from New Mexico, as I want to be, the majority leader has told us we are going to vote on cloture tomorrow on the attorney general of Alabama, Mr. Pryor. We have had no opportunity to debate this. We will have a half hour tomorrow under the rules. We are going to have members of the Judiciary Committee come this afternoon and speak to the competency and the professionalism of the attorney general of Alabama to be a United States Federal judge. People are going to take some time doing that. When they will come, I don't know. But we wouldn't want them to be prevented from doing that because we are in a time agreement on the Feingold amendment.

Mr. DOMENICI. Could we agree where we are going? There is an amendment up shortly, is there not?

Mrs. FEINSTEIN. Reserving the right to object.

The ACTING PRESIDENT pro tempore. No unanimous consent has been propounded. The Senator from New Mexico controls the time.

Mr. DOMENICI. Mr. President, I have not propounded a unanimous consent request. I just wanted to know how much time is left to Senator CANTWELL.

The ACTING PRESIDENT pro tempore. The Senator from Washington controls 7 minutes and 20 seconds. The Senator from New Mexico controls 9½ minutes.

Mr. REID. If the Senator will yield for a question.

Mr. DOMENICI. Yes.

Mr. REID. The Senator from California is here. The Senator from Washington has 7 minutes left. She wants to close. We have no more time than 7 minutes. The Senator from California wishes to speak on this amendment. She can only do that if unanimous consent is given to allow her to speak for up to 15 minutes. Otherwise, she will not be able to speak on the amendment. She wants to. Is that a fair description?

Mrs. FEINSTEIN. It is a fair description. I have great respect for the chairman of our committee. However, he did not correctly present the California situation. I would like an opportunity to set the record straight.

Mr. REID. I ask unanimous consent that on the Cantwell amendment, the Senator from California be allowed to speak for 15 additional minutes and that, of course, the majority, if in fact they want 15 minutes, would have equal time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DOMENICI. Yes, there is objection.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DOMENICI. Mr. President, I don't want to object to the Senator from California speaking. I just want to remind the Senator and the Senate, this amendment has been on the floor 3 hours—not 3 minutes, not 30 minutes, 3 hours. We are supposed to vote, generally, when 3 hours is up. Three hours will be up in a few minutes. I would like to proceed and vote. I have a few minutes. I don't know that I need it. But I really don't think I am being unfair in suggesting to the Senator that perhaps, so we can vote on an amendment that has been pending for 3 hours, if you could take half the time you requested so we can proceed to vote, I would have no objection.

Mrs. FEINSTEIN. If I may respond, this is an amendment on market manipulation. You, Mr. Chairman, have just said there wasn't market manipulation.

Mr. DOMENICI. I have not.

Mrs. FEINSTEIN. I would like to present evidence specifically. I have 18 to 20 disks involving 3,000 pieces of paper which is evidence presented to FERC of market manipulation in the California market. This Senator has done a great service because those of us out west know what happened. What happened is so egregious as to give the senior Senator from California an opportunity to support the amendment of her colleague.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico has the floor.

Mr. DOMENICI. I don't think it is fair for the Senator—I am going to give her time, but I don't think it is fair for her to give a speech this way. She knows she is going to get time, and she can just be patient like every other Senator, if you don't mind.

Mrs. FEINSTEIN. I have been patient.

Mr. DOMENICI. I thank you.

Might I say to the Senate, the Senator from New Mexico has responded to an amendment. Never once did I say there was no market manipulation. I don't intend that every time any of us gives a speech, that somebody come to the floor when there are time agreements and decide they would like to give a speech on something they heard.

I said there are studies that say market manipulation was not the principal reason for what happened. If the Senator would like to speak, I would ask her if she would speak for a little less time so we can proceed, since the time is up. I can object, and we will vote. And then you can speak after the vote.

Mr. CRAIG. Will the chairman yield?

Mr. DOMENICI. I am pleased to.

Mr. CRAIG. So you can sustain the goodwill of the rest of the colleagues because you are managing the bill, you should.

The ACTING PRESIDENT pro tempore. If the Senator will suspend. The Senators are reminded to address one another in the third person or through the Chair.

Mr. CRAIG. I simply say to the Senator that to sustain the goodwill that he needs to, he will work the bill, but when there are time agreements of 3 hours, this Senator will object to adding more time.

Mr. DOMENICI. I wanted to ask the Senator if he wanted to object at this point. He is not going to object.

How much time did the Senator ask for?

Mrs. FEINSTEIN. I asked for 15 minutes.

Mr. DOMENICI. I wonder if you would take 10 minutes.

Mrs. FEINSTEIN. I will do my level best.

Mr. DOMENICI. All right, 10 minutes, so long as we understand. I ask unanimous consent that she have 10 minutes, after which time we will finish the time allowed and then we will vote on the pending amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from California is recognized for 10 minutes.

Mrs. FEINSTEIN. Mr. President, I thank the chairman of the committee.

I wanted to say a few words in support of what Senator CANTWELL is trying to do. Perhaps those of us in the West are more disconnected from the Beltway than I ever believed, but let me give you a startling fact which will demonstrate market manipulation. The total cost of electricity in California in 1999 was $7 billion. It increased 400 percent in one year to $27 billion the next year. There is no way supply and demand can be responsible for a 400 percent increase.

What we now know is that power generators, traders, and marketers manipulated the western energy markets, and the market abuse wasn't simply limited to Enron. Look at these schemes. There are more than we ever knew: Ricochet, Death Star, Get Shorty, Fat Boy, Nonfirm Export, Load Shift, Wheel Out, Black Widow, Red Congo, Cuddly Bear. This was not limited to Enron. It was a widespread series of schemes perpetuated by many companies that supplied and traded in the West. I deeply believe this.

The State of California, the California Attorney General's office, and the State's largest utilities compiled the 3,000-page report detailing the pervasiveness of fraud and manipulation in the western energy market in 2000. Then they couldn't present it to FERC. They had to go to a Ninth Circuit Court of Appeals to get the ability to conduct discovery and evidentiary hearings to be able to bring the allegations of fraud and manipulation to FERC. So the whole Federal system is stacked against allowing a State to make a presentation of fraud and manipulation.

This report concluded that energy companies intentionally withheld power from the western market, driving prices up and creating false shortages. For example, from August 30 to December 3, 2000, Dynegy shut down one of its units for repairs, yet repairs had already been done prior to August 30.

The report's conclusion: The plant was shut down to intentionally drive up prices.

Another example. Following an external tube leak, Merit held one of its plants offline for 2 extra days, from October 20 until October 22, 2000, denying the western energy market much needed power and driving prices up. The report also submitted evidence that suppliers bid higher after the California independent systems operator declared emergencies, knowing full well the State would need power and would be willing to pay any price to get it.

Further, we learned that suppliers submitted false load schedules to increase prices. One example of this bogus load is demonstrated in an internal PowerX memo, which documents that PowerX entered into a contract with the explicit purpose of overscheduling and underscheduling and for congestion manipulation.

Other games were played in the western energy market, including collusion among sellers, sharing of nonpublic generation outage information, and the manipulation of the nitrogen oxide emission market. Just look at one fact. One company, CMS Energy Corporation, has admitted conducting wash energy trades that artificially inflated its revenue by more than $4.4 billion. These round trips accounted for 80 percent of that company's trading that year, in 2001. So 80 percent of the trading of a large company was bogus in that year. The market was rife with fraud and manipulation.

Senator CANTWELL's amendment attempts to strengthen the Federal Power Act, so that the fraudulent and manipulative behavior we witnessed in the western energy crisis does not go unpunished.

The problem is that FERC could not go back. FERC would not accept findings from California to document the fraud and manipulation. California, to this day, has not received $1 of refund, despite settlements. So that is what is really going on out there, and that is a huge problem.

To have an Energy bill that doesn't adequately deal with fraud and manipulation is something none of us should vote for. I will tell you why. Under the present regulations, it can and will happen again. These companies will try to do it if they possibly can. Consumers should be protected from fraud and manipulation perpetrated by people who are only motivated by profit, which we know dominated the trading scenario in the western energy market. I can tell you terrible things traders said about shutting off power for the purpose of inflating the bottom line of their company. That is wrong and it should be dealt with.

The fact is that FERC has not dealt with it up to this point. So I very strongly support what Senator CANTWELL is trying to do. I hope the Senate will accept it because I think the energy title is weak. I hope at a later time to add natural gas to some of the

provisions that this bill achieves in terms of increasing penalties in the electricity market. Unfortunately, the bill does not harmonize penalties for the natural gas market, and there is ample evidence of fraud and manipulation as well in the national gas market, specifically with El Paso Natural Gas, and I hope to indicate that in an amendment I will do at a later time.

I have tried to truncate my remarks to cooperate with the chairman. I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DOMENICI. Mr. President, I thank the Senator for getting her remarks down to 10 minutes. How much time does Senator CANTWELL have?

The ACTING PRESIDENT pro tempore. She has 7 minutes 20 seconds.

Mr. DOMENICI. Does she want to deliver her remarks?

I yield the floor.

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

Ms. CANTWELL. Mr. President, how much time is available?

The ACTING PRESIDENT pro tempore. There are 7 minutes 20 seconds remaining. The Senator from New Mexico has 5 minutes.

Ms. CANTWELL. Does the Senator from New Mexico wish to complete his comments?

Mr. DOMENICI. I will wait for a while.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. CANTWELL. Mr. President, I appreciate the chairman of the committee giving time to the Senator from California so she could explain and respond to her views on this issue. I appreciate my colleagues from the West engaging in this debate. I appreciate the Senator from Idaho coming to the floor and reiterating to this body, yes, how ratepayers in Washington, Oregon, and Idaho got stiffed. That is the right word. We got stiffed. We got stiffed with paying a bill more exorbitant than ratepayers should have to pay.

The debate that has ensued in the last few minutes is whether the Domenici underlying amendment has enough protections in it to protect consumers or whether we need the Cantwell amendment. It is a clear and simple and plain statement that market manipulation should be outlawed in the Federal Power Act as not being just and reasonable.

I thank the Senator from Louisiana for her comments. She supports the underlying Domenici title, but she supports my amendment as well because she knows that kind of language can be helpful and can be specific.

Let me be clear. If anybody thinks that the Enron manipulation didn't have a profound and adverse impact on the marketplace and that this is all about poor management in California, I can assure you that is not the case. This is about whether this body is going to adopt tough standards against market manipulation so there is no question by the public. So the public doesn't debate, if there was a shortage of supply or manipulation going on?

We know there was manipulation going on. We have proof of it. The FERC itself said:

> Enron and its affiliates intentionally engaged in a variety of market manipulation schemes that had profound, adverse impact on market outcome.

There it is. The FERC said itself that market manipulation had profound, adverse impact on the market. So we know for a fact that market manipulation had an impact in California, it had an impact in Washington, it had an impact in Oregon, and it had an impact in Idaho. The question is whether this body is going to do enough to protect consumers in the future.

So the chairman of the committee—I appreciate his earnest time on the electricity title, and I appreciate the fact that he wants to have some protection in this legislation. But these protections don't go far enough.

Let me explain why. There is transparency language in the underlying Domenici title. Some of those powers are already in place with FERC. They are not doing us any good because reporting to FERC is one thing; reporting to the California ISO, the independent systems operator, who basically was the cog by which all the manipulations took place, you are not under any kind of threat or penalty for reporting falsified information to them. That is where the manipulation took place, so the Domenici title does not cover that situation.

There is a lot of talk in the bill about the Commodity Futures Trading Commission, and there is a section in the bill that tries to beef up that language. That is a noble attempt. I much prefer the Feinstein amendment which has very specific language about closing a loophole.

I have a letter from the National American Securities Administrators Association. They basically say the Domenici language is flawed. These are Federal regulators who are supposed to regulate this policy. They say the Domenici language is flawed because it will prohibit any Federal or State agency from obtaining information directly from a board of trade or exchange or market involving commodities, and that State and Federal agencies will be impeded from investigating violations of these wide range of commodities.

I ask unanimous consent that this letter from the National American Securities Administrators Association, about how the Domenici language is trying to correct some of the problems is actually causing a new problem and is not going to protect people, be printed in the RECORD.

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

NORTH AMERICAN SECURITIES ADMINISTRATION ASSOCIATION, INC.,
Washington, DC, July 29, 2003.

Hon PETE V. DOMENICI,
Chairman, Committee on Energy & Natural Resources, Washington, DC.

Hon. JEFF BINGAMAN,
Ranking Minority Member, Committee on Energy & Natural Resources, Washington, DC.

Re: S. 14, the Energy Policy Act of 2003.

DEAR CHAIRMAN DOMENICI AND RANKING MEMBER BINGAMAN: The North American Securities Administrators Association (NASAA) is writing to express its concern over proposed language in the Domenici substitute to Title XI, (the electricity title) of S. 14, the Energy Policy Act of 2003.

Proposed Sections 1171 and 1173 would require that ''any request by any Federal, State or foreign government, department, agency or political subdivision'' to a ''board to trade, exchange, or market'' involving transactions in commodities ''within the exclusive jurisdiction'' of the Commodity Futures Trading Commission (CFTC) ''shall be directed'' to the CFTC.

This prohibition on federal and state information gathering directly from a board of trade, exchange or market would place unnecessary burdens on state securities regulators when they investigate violations of laws regulating foreign exchange products, energy products and financial instruments. Over the years, state securities regulators have handled many of the foreign exchange cases under authority contained in the Model Code and state securities laws.

This language would prohibit state securities regulators from directly seeking information from a CFTC regulated entity. State securities regulators do not have regulatory jurisdiction over a CFTC regulated entity, but we must retain our authority to subpoena documents from all relevant sources as part of our enforcement cases. For example, a registered representative of a securities firm could illegally take investor funds and trade in commodities, and our members might have to subpoena a futures exchange for trading records or other information.

The CFTC and the states have a history of coordinating efforts and working successfully toward our mutual goal of protecting investors by recognizing potentially fraudulent activity and bringing it to the attention of the public. However, mandating that regulators go through the CFTC for information could be burdensome, time-consuming and inhibit our ability to investigate wrongdoing in a timely and efficient manner. It may also place the CFTC in a difficult position of deciding whether to send a state's subpoena to one of the exchanges it regulates.

With the fallout from Enron and a variety of financial scandals still in the news, now is the time to strengthen, not weaken, our complementary system of state and federal securities regulation. There seems to be no justification for limiting the ability of state securities regulators to gather information directly from a futures exchange.

We urge you to strike Sections 1171 and 1173 from the Domenici substitute. Please do not hesitate to contact me if I may be of further assistance to you.

Sincerely,

CHRISTINE A. BRUENN,
NASAA President,
Maine Securities Administrator.

Ms. CANTWELL. Mr. President, the bottom line is, in this amendment, while round-trip trading is covered and some, I am sure, well-intentioned language on reporting and falsifying information to FERC, it does not cover a myriad of other manipulative schemes

that have been deployed and used by Enron.

Fat Boy is not outlined under the Domenici language. Ricochet is not outlined under the Domenici language. Death Star is not outlined under the Domenici language. Load Shift, Get Shorty, and Wheel Out are not outlined under the Domenici language.

I understand the chairman wants to see that the manipulation stops. In this Senator's opinion, that manipulation will stop when this body stands up and says to the American people with simple language in the Power Act: Manipulated prices are not just, they are not reasonable, and anyone who deploys them are not doing so in the public interest, and we cannot give them market-based rates.

If this body will say this, then any future debate about natural gas prices will not be about whether some company manipulated them, it will be about the real issues of the supply and demand.

Let's give the consumers confidence that market manipulation is prohibited in Federal law and that this body does not condone Enron's activities but is going to be aggressive in outlawing them.

Mr. President, how much time do I have?

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, the bill before us does away with the Enron loophole, there is no question about it. If I came from California or Washington, I would come to the floor of the Senate and offer an amendment that was very precise and specific and talked about the problems of the people of the west coast. That is what the Senator is doing. But merely talking about them does not mean that the bill before us does not protect her people. The truth is, it does.

The Domenici amendment protects consumers in the States of Washington, California, and others who were victimized by the Enron scandal, and many others, and market regulations in California that were doomed from the outset to cause the failures that occurred. To regulate at one level and deregulate at the other level is clearly to invite exactly what happened, and then the spillover falls onto the adjoining States, including that of the distinguished Senator from Washington, Ms. CANTWELL.

I commend the Senator from Washington for her genuine and abiding concern for her people. I commend the Senator from California for her studious and lengthy involvement in attempting to ascertain and articulate the problems. But neither of those qualities require serious amendment to this bill. They require just what is happening: that the Senators representing those problems speak to the issues. And speak they have—3 hours and 15 or 20 or 30 minutes on this subject—and, I assume, before we are finished on collateral issues even more.

I could take out my preparatory books, where I spent hours talking to everyone of every ilk in every type of industrial input and involvement as we put this bill together, and read the language showing that what happened before will not happen again.

I could tell my colleagues what has happened is being broken up by those in the criminal justice structure of our Government, and those involved with the civil part are filing their lawsuits. Neither of the States involved are having the same problem because there are protections being carried out, and there will be more when this bill is adopted, without adding any more burdens, additions, or specificity to the bill.

It is with great regret that I suggest we keep—since it was worked out so delicately with so many different units, institutions, and groups—that we preserve the delicacy of this bill. The Senator who proposed this knows that the cooperatives that are very worried have spoken to the fact that they do not need any more protection. They have told her that. They have told her office that. And there are more associations beyond them that say their fears are alleviated by this bill.

I yield the floor, and we will proceed.

The ACTING PRESIDENT pro tempore. All time has expired.

The question is on agreeing to the amendment.

Ms. CANTWELL. Mr. President, I ask unanimous consent that Senator HARKIN and Senator ROCKEFELLER be added as cosponsors to the amendment.

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

Mr. REID. I ask for the yeas and nays.

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

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—48

Akaka	Conrad	Gregg
Baucus	Corzine	Harkin
Bayh	Daschle	Hollings
Biden	Dayton	Inouye
Bingaman	Dodd	Jeffords
Boxer	Dorgan	Johnson
Byrd	Durbin	Kohl
Cantwell	Edwards	Landrieu
Carper	Feingold	Lautenberg
Clinton	Feinstein	Leahy
Collins	Graham (FL)	Levin
Lieberman	Pryor	Schumer
Lincoln	Reed	Smith
Mikulski	Reid	Specter
Murray	Rockefeller	Stabenow
Nelson (FL)	Sarbanes	Wyden

NAYS—50

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Domenici	Murkowski
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Nickles
Breaux	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Hagel	Snowe
Chafee	Hatch	Stevens
Chambliss	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Kyl	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	

NOT VOTING—2

Kennedy	Kerry

The amendment (No. 1419) was rejected.

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

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to 60 minutes of debate with 30 minutes under the control of the Senator from Vermont, Mr. LEAHY, and 30 minutes under the control of the Senator from Kentucky, Mr. MCCONNELL.

The assistant minority leader.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the time under my control be as in morning business.

Mr. REID. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. It is my understanding the Senator from Kentucky is going to use the half hour under the rule now available before the Senate on the Estrada cloture. He is going to use his time as in morning business; is that correct?

The ACTING PRESIDENT pro tempore. That is the request. The Senator from Kentucky.

Mr. MCCONNELL. I did not hear the assistant Democratic leader.

Mr. REID. I just said the half hour that you are entitled to under the Estrada time for cloture, you are going to use that as in morning business?

Mr. MCCONNELL. I would say, Mr. President, that is correct.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Kentucky controls the time.

MEASURE READ THE FIRST TIME—S. 1490

Mr. MCCONNELL. Mr. President, I send a bill to the desk and ask for its first reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title.

The legislative clerk read as follows:

A bill (S. 1490) to eliminate price support programs for tobacco and provide assistance to quota holders and tobacco producers and tobacco-dependent communities, and for other purposes.

Mr. MCCONNELL. I now ask for its second reading and object to further proceedings on the matter.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will receive its second reading on the next legislative day.

TOBACCO MARKET ADJUSTMENT ACT OF 2003

Mr. MCCONNELL. Mr. President, I rise today to introduce the Tobacco Market Adjustment Act of 2003. This is truly a key moment in the history of tobacco as each of the Senators from the leading tobacco-producing States stands united in support of changing the Government's involvement with tobacco.

This legislation enjoys the support of farm bureaus from Kentucky, North Carolina, Virginia, Tennessee, South Carolina, Georgia, Florida, as well as the support of the Burley Co-op, Burley Stabilization, and the Council for Burley Tobacco.

I ask unanimous consent to have letters indicating their support printed in the RECORD.

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

JULY 16, 2003.

TOBACCO STATE SENATORS: For many tobacco dependent states in the Southeastern United States, tobacco buyout legislation, possibly coupled with FDA regulation of tobacco products, is the most important potential federal legislative initiative for 2003. The undersigned Presidents of State Farm Bureaus believe this is the year to accomplish a tobacco buyout. For that reason, we urge you to endorse the legislative language developed by many meetings of Senate staff and eventually pledge your willingness to cosponsor the legislation as it is introduced.

We continue to believe there are some details yet to be ironed out in the legislation and we look forward to working through those as we continue the process, but we believe that to move forward, it is imperative that all tobacco state Senators support one bill and we believe the legislative language developed by the Senate staff gives all of us the best shot at accomplishing a buyout this year.

We appreciate all the work you have done up to this point in ensuring that tobacco farm families have a vibrant future, and we look forward to continuing to work through this process in the weeks ahead.

Sincerely,

SAM MOORE,
President, Kentucky Farm Bureau.
FLAVIUS BARKER,
President, Tennessee Farm Bureau.
BRUCE HIATT,
President, Virginia Farm Bureau.
CARL LOOP,
President, Florida Farm Bureau.
LARRY WOOTEN,
President, North Carolina Farm Bureau.
DAVID WINKLES,
President, South Carolina Farm Bureau.
WAYNE DOLLAR,
President, Georgia Farm Bureau.

THE COUNCIL FOR BURLEY TOBACCO,
Lexington, KY, July 25, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: The Council for Burley Tobacco, Inc. believes that during the 2003 Legislative Session is the best and maybe the only time to pass a Tobacco Buyout Bill. We are concerned about the lateness of the legislative session.

We appreciate very much your leadership in developing a consensus buyout bill with the Senate Tobacco Group and we fully support your effort to introduce and move forward in the Senate the consensus bill.

Please let us know how we can help you with this process and again we thank you for your leadership and support.

Sincerely,

JOHNNY BULLOCK,
President.
DEAN M. WALLACE,
Executive Director.

JULY 29, 2003.

Hon. MITCH MCCONNELL
U.S. Senate,
Washington, DC

DEAR SENATOR MCCONNELL: We are writing to thank you for your ongoing effort to help tobacco farmers and our communities and to offer our support to secure Senate passage of your newly-drafted tobacco buyout legislation.

Our organizations and the farmers we represent firmly believe that the Congress has a unique opportunity to establish a new visionary tobacco policy in this country—one that will allow tobacco-producing communities to adjust to the realities of the permanently altered marketplace while simultaneously protecting public health. We are united in our view that the Senate consensus bill is a major step toward achieving that objective.

While we look forward to continued discussion on a few key provisions in the Senate bill, we intend to work vigorously to secure Senate passage of this legislation.

Again, thank you for your leadership and commitment to tobacco farm communities. We stand ready to work with you side-by-side to pass historic tobacco legislation in 2003.

Sincerely,

HENRY S. WEST,
President, Burley Tobacco Growers Cooperative Association.
GEORGE MARKS,
President, Burley Stabilization Corporation.

Mr. MCCONNELL. Mr. President, tobacco was in the United States before Europeans arrived here. It is depicted in various places here in the Capitol. George Washington and other Founders of our country grew tobacco. It has been an integral part of our history.

It is also no secret that the use of tobacco is dangerous to the health of Americans. Increasingly that view is held by a large number of Americans. The unfortunate side effect of that from an economic point of view in a State such as mine, which still has 44,000 tobacco growers, is that their income continues to plummet.

Back in 1998, I first suggested a buyout might be an appropriate direction in which to go. Ironically, at that time, that was roundly criticized by all the farm organizations in my own State and across the burley belt and flue-curing areas, the argument being that it would lead to the end of tobacco production.

It is interesting, as I go across my State, that I am treated now as a visionary because it is now virtually the unanimous view of our growers and certainly the unanimous view of our farm organizations that a buyout is the only appropriate measure to take at this particular juncture in our history.

The reason for that is the quota established under the tobacco program back in the 1930s, which has been adjusted year to year all of these years, has declined dramatically—up to 40 percent in the last 3 or 4 years alone. Our growers realize they are sitting on a declining asset that lowers the value of their property and their farm values and it is time to act and to move in a different direction.

Simply putting together a buyout proposal everyone could agree to—that is the various farm organizations as well as Senators from tobacco States—has not been easy. In fact, we have been working on this for 6 months to get to the point of actually introducing a bill, which as we all know around here is just the beginning. When you introduce a bill, it is not easy. It has not been easy to get to this point, which many people would argue is just the start. We have, however, almost total consensus. We have 100 percent consensus among tobacco State Senators and almost total consensus among those involved in the production of tobacco. We feel that is a significant accomplishment although it certainly doesn't guarantee the result we all would like to see, which is a law.

We understand this issue is likely to go forward in the Senate in conjunction with an FDA tobacco regulation bill which is being worked on in the Labor Committee under the leadership of Senators GREGG, DEWINE, and KENNEDY. It is our hope at some point after the recess to link those two measures together with what we hope will be a formidable coalition here in the Senate across an ideological divide to move us in the direction of achieving both of these goals.

Frankly, accepting an FDA bill is a bitter pill for this Senator to swallow, and I think some other Senators from the burley belt and flue-cured tobacco areas. But that simply is the reality which we confront today. These measures are likely to move in transition.

I also want to commend my colleague from Kentucky, Senator BUNNING, who I know is here on the floor. He has been

an integral part of the development of this bill, as well as our new colleague from North Carolina, Senator DOLE, who is also here, both of whom will be speaking momentarily. They have been completely involved in the formulation of this product from the very beginning. As I said, it has not been easy to get to this point. We all understand it is going to be difficult to move the ball even further down the playing field. But today we begin with unity. We begin with an aggressive effort to achieve this buyout for our farmers.

America's history is closely linked to tobacco. It provided the early settlers with a key crop fro trade and barter, and it provided gentleman farmers throughout the colonies with livelihoods that sparked the first inklings of the dream of an independent country. Throughout this beautiful Capitol there are depictions of tobacco leaves signifying this crop's importance to the founding of this country. George Washington, Thomas Jefferson, and James Madison all raised tobacco. Almost no crop in the history of agriculture has provided so many with a living off of so little land.

In agriculture, it is popular to speak about the importance of supporting the small farmer. In reality, the number of small farms has declined as competitive forces have forced most farms to consolidate and diversify to compete. Many farmers now must work second jobs in addition to farming just to get by. However, over centuries, small farmers with limited land have been able to carve out a living farming tobacco. The average acreage per tobacco farm is 6.7 acres—for my friends from the South and the Great Plains, you know that these are some small farms.

In my home of Kentucky, tobacco production is intimately connected to the history and the culture of the State. In fact, the basis of agriculture in the State of Kentucky has been inextricably tied to this crop. Home mortgages have been based on crops, loans for small businesses, and even children's educations have been funded through the performance of an individual's tobacco crop. It has been said that ''A good crop is a good Christmas.''

At harvest time, families gather: sisters, brothers, aunts, uncles, cousins and children all set about the hard work of bring in a tobacco crop. In the late fall, when the markets open for crop, entire communities hold celebrations and ceremonies. The marketing process along with the auctions have a particular significance as the livelihood of an entire family is dependent on a good crop.

Throughout Kentucky, tobacco has helped small communities construct schools and convention centers, it has supported local governments, and most importantly, it has supported the small family farmer. In Kentucky, tobacco is considered the 13 month crop, since there is virtually no time during the year that difficult and labor intensive work is not required. Despite the difficult labor required, it has provided generation after generation with the opportunity to make a living.

However, the very qualities that have allowed tobacco production to continue through the years have also led to the dependence of a culture, and a region, on this crop. There is no simple solution to the problems facing tobacco farmers, but there are clear steps that we can and should take to help these individuals transition into a new era.

Most of the key tenets of the tobacco program were established by the Agriculture Adjustment Act of 1938. The program implemented a system of supply restrictions and price guarantees aimed at stabilizing tobacco prices and income. Under this program, farmers agreed to restrict supply via acreage/marketing allotments—or quotas—in exchange for minimum price guarantees. The levels of production were set each year to best ensure that the prices received for tobacco would meet or exceed the guaranteed price.

These marketing quotas were originally divided among active growers, but this production right was then handed down to heirs or sold to others as an asset. As a result, much of the quota is now controlled by non-producers who rely on proceeds from renting or leasing this production right to growers. It is regarded as an inheritance and has been relied upon to support many seniors' retirements.

In 1982, the first major modifications to the tobacco program were made, requiring the program to operate at no-net-cost to taxpayers. Since then, Federal funds have been prohibited from being used for export promotion of American tobacco or research relating to tobacco production, marketing, or processing. As a result of many international and economic factors, the price supports have been reduced several times since the 1980's as well.

Under the current program, levels of production are cut in an effort to ensure a stable price. With lower consumption and increased foreign competition, the levels of quota have been cut significantly and farmers are paying much higher quota rents to continue producing.

In 1998, I proposed a buyout of the tobacco program, but this measure failed due to a lack of support from grower groups and a lack of consensus among elected representatives from tobacco producing States. Since my effort in 1998, the programmatic decline of production has imposed severe economic hardships on tobacco producing communities. During a time when most agriculture production in this country has had to consolidate into larger operations to remain competitive due to economies of scale and foreign competition, tobacco farmers, faced with the same challenges, have actually been forced through this program to simply cut production. While manufacturing needs have only declined slightly, production quotas have been reduced by more than 60 percent. Such production cuts have forced domestic producers to vacate ever larger amounts of market share to foreign producers. As a result, domestic production levels have not been this low since 1908.

Despite financial help in the form of tobacco loss assistance payments, the crisis imposed by the program is plunging rural farm families in Kentucky and throughout the tobacco belt into poverty, bankruptcy, or simply eliminating the ability of entire communities to remain engaged in agriculture.

In less than a decade the number of tobacco farms in the United States has declined from 123,000 individual farms to right around 90,000, with 44,000 of those in Kentucky. At the same time the annual value of domestic tobacco farm production has fallen from an average of $2.8 billion per year during the 1990's to $1.7 billion in 2002. In Kentucky, tobacco represented 24 percent of total cash receipts for agriculture products during the 1990s. By 2001, cash receipts for tobacco dropped to 16 percent, and further quota cuts have continued to reduce the amount of tobacco that can be sold by producers.

Imports have also had a significant impact as the quality of foreign leaf has improved, domestic production has been restricted, and the price of U.S. tobacco has been kept artificially high by quota rent costs. These factors have led to dramatic increases in the amount of imported tobacco, with imports increasing by 25 percent between 2001 and 2002 alone.

Simple put, 165,000 of my constituents and 44,000 rural family farms in Kentucky are facing financial ruin due to the continuation of a program that we in the Congress have the power to change. In 1998, growers were divided on the issue and no consensus could be reached. Today, the introduction of this bill signifies the unified support of tobacco state Senators and growers to achieve the reforms.

The Tobacco Market Transition Act represents months of hard work and negotiation. Such an undertakiing has required input, debate and compromise over every element of the legislation ranging from the funding mechanism to the health consequence of the changes that we are proposing. It provides tobacco growers with a fair level of support for transition and tobacco quota owners with a fair level of compensation for their asset. We also worked to ensure that these payments are fully decoupled from current production, to avoid any possibility of trade implications.

The changes we propose represent a radical shift in the way that tobacco production will occur in this country. The current tobacco program has outlived its usefulness, and now represents a hurdle and a threat to the economic health of communities in tobacco producing states. Therefore, it is important to end the quota system and do

away with the strict production control price support system to usher in the necessary reforms.

This legislation will provide $8/lb on 2002 basic quota for quota owners and $4/lb on effective quota for 2002 for growers over 6 years. The funds required will be obtained from manufacturers and importers of all tobacco products sold in the United States and shall total no greater than $13 billion. Many quota owners and growers would like to be compensated at higher levels, while many companies claim that the levels are too high. This bill represents our extensive efforts to take both the needs of the growers and the concerns of the companies into consideration.

No longer will quota owners have control over the right to grow tobacco, a right that has been handed down from generation to generation regardless of their actual involvement with production. In doing so, this bill eliminates the increasing expense of quota rent, which has artificially increased leaf prices without any benefit to actual growers or manufacturers. This requires that these assets, assets that were created and given value to through government policies, be compensated. The impacts on the growers will be immediate and the reduced costs of tobacco produced in the U.S. will reduce leaf prices for manufacturers who utilize domestic tobacco.

However, in our consideration of the problems facing the farmers and the manufacturers of tobacco products, it was essential to consider the adamant opposition of health groups to the unrestrained growth of tobacco throughout the United States. For years, tobacco production has been limited in both the area it could be grown and the amount that could be produced. Our proposal addresses these concerns by limiting tobacco production to traditional tobacco producing regions and providing a mechanism for producers to limit the amount of acreage grown for each kind tobacco to historically established levels.

The key difference between the programs of yesteryear and the reforms we are proposing today is the removal of the price guarantee for every pound of tobacco grown. Under this new system, production will reflect the market realities of the tobacco industry. This system provides key elements for tobacco dependent communities to transition out of tobacco production, while affording those who accept the risk, the opportunity to continue and compete in a shrinking and every more competitive market. Should these individuals choose to continue, we have created in this bill the opportunity for growers to insure themselves—at no expense to the U.S. taxpayer—against disastrous market conditions that might emerge.

In addition to the buyout of quota, transition payments to growers, and the new regulations governing tobacco production, this bill provides significant support to assist small tobacco dependent communities as they attempt to adjust to diminishing tobacco production.

This legislation will not solve all the problems that face small tobacco farms, but it does set in motion a system of reform and transition that will allow these individuals and these communities a chance to continue or move into new industries. Such continuation or transition will not be possible without this legislation. These communities are suffering due to problems with a government program that we have the power to change. As elected representatives, we have a responsibility to fix these problems, improve the lives of thousands of small farmers and greatly impact the future of an entire region.

I salute my colleagues from tobacco producing states for their hard work and willingness to compromise to reach this consensus legislation. It has been a long and difficult process, but this is only the first step in addressing this issue. For this exercise to have any meaning whatsoever, we need to enact this legislation and make these reforms as soon as possible.

The worst thing that can happen is nothing. So, I ask my colleagues from all 50 States for their support of the Tobacco Market Transition Act of 2003.

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

Mr. BUNNING. Mr. President, I rise today in support of S. 1490, the Tobacco Market Adjustment Act. Since Daniel Boone first came through the Cumberland Gap in 1775, farming has provided the economic and cultural backbone of Kentucky.

The family farm is the foundation for who we are as a commonwealth. And for over a century, the family farm in Kentucky has centered around one crop—tobacco.

Tobacco barns and small plots of tobacco dot the Kentucky landscape. We are proud of our heritage and proud of the role that tobacco plays in our history. Recently, we have recognized that we cannot rely upon tobacco forever. We have seen the handwriting on the wall. In fact, in 1998 the Senate had a long debate about the future of tobacco. Nothing passed then. But ever since we have known that sooner or later the subject was going to return to the Senate floor.

Back in Kentucky, we have over the past few decades begun to diversify and to prepare for the future.

We have tried to broaden our agricultural base. And we have had some success with vegetables, beef cattle, raising catfish and expanding into other areas like ethanol production.

But, at the end of the day, nothing brings as much of a return to the small farmer and tobacco quota holder in Kentucky as tobacco.

Whatever the opponents of tobacco say, there is no denying that the future for thousands of family farms and small communities across the south is tied directly to tobacco.

This is a complicated issue. Many tobacco quota holders are not even full-time farmers and hold off-farm jobs.

And even full-time farmers usually do not raise only tobacco but grow it as only part of their total crop. But it is a crucial part, and for many families it is absolutely irreplaceable, because the money they get from tobacco pays their mortgage, puts their kids through school or allows them to keep farming.

Outside of the western part of our State, Kentucky does not have tens of thousands of acres of flat land. We need a crop that grows on rolling hills, that thrives in our climate and can be profitably raised on small plots that cannot accommodate other crops. Tobacco does that, and economically it is the only crop that can.

Farmers get a yield of over $4,000 per acre of tobacco. They get less than $300 per acre for corn, soybeans and hay. That is how big the difference is. This is what has made tobacco the economic linchpin for rural Kentucky. It is profitable and farmers rely on it. That might not be popular today but it's an economic reality we have to face.

This Senate cannot—and if those of us from tobacco States have any say about it, it will not—work on tobacco legislation without taking care of tobacco farm families. Time have been getting tougher and tougher for small farms and rural communities in Kentucky. Plus, as I am sure most of my colleagues know, there is no tobacco subsidy.

We do have a price support system and production control program. But even the quotas have lost 60 percent of their value since 1998. No business would be around if it lost 60 percent of its income in 5 years, and we have lost a lot of growers.

Many farmers are barely holding on. They need help.

We believe that the time has come to assist them and to get the Government out of the tobacco business at the same time.

Our bill, which has the full support of the grower community, will buy out the tobacco program. We will give our growers relief and end the Federal price support program.

We will let many growers, whose average age is 62, retire with dignity.

Dr. Will Snell, the highly regarded agricultural economist at the University of Kentucky, estimates 70 to 75 percent of tobacco growers will get out of the business with a buyout.

In recent years tobacco has come under fire from all sides. And while the antitobacco forces might not have intended it, their attacks are hurting tobacco farm families and rural America.

In Kentucky, we have counties that depend on tobacco for as much as 85 percent of their revenue.

Without a tobacco base, land values will collapse and rural communities could fall into an economic death spiral.

Falling land values mean lower property tax revenues and eventually severe cuts in services such as police, fire, and emergency services, schools, sewers, and roads.

For decades farms and small communities have been built around the cultivation of a legal crop. To change that now without accounting for the consequences would be devastating.

Our bill recognizes this reality and would offer some degree of economic certainty for tobacco farm families that toil at the mercy of forces more powerful than themselves.

Mr. President, I am a realist. I know that passing any sort of tobacco legislation in Congress is a difficult, uphill fight. And I do not know if we are going to be successful with this bill. But I do know that if any tobacco legislation passes, it must include help for tobacco farm families. It is the least we can do for them.

I urge my colleagues in this Senate to understand this problem we are having in these six tobacco States.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mrs. DOLE. Mr. President, tobacco farmers across the Southeast have been anxiously waiting for this day—the day when they can see hope for the future. During the past 6 months, Senator MCCONNELL, Senator BUNNING, and I have been working with all of the other Senators from major tobacco States to craft legislation that will enable tobacco-dependent communities to survive.

The Tobacco Market Transition Act, which we are introducing today, will mark a major change from the current tobacco program, and it will bring a major sigh of relief to countless farm families across the Southeast.

For years, the Federal tobacco program created economic opportunity for farm families in North Carolina and other tobacco-producing States. It allowed towns to prosper that would have been hard pressed to make it otherwise. It provided stability when other commodities suffered low prices. It was the standard bearer of all farm programs. Buyers of tobacco would come from all over the world to purchase America's leaf. America's tobacco farmers held the world standard for quality, and they still do today. But the environment in which they find themselves is much different. And it is not of their own making.

The current tobacco program was never designed to accommodate the significant changes that have engulfed this industry during the past decade. Extensive litigation has forced the companies to cut costs and thereby purchase increasing amounts of cheap foreign tobacco. The increasing cost of U.S. leaf as a result of the current tobacco program has caused more and more foreign buyers to look elsewhere for their supply. The numbers do not lie: The United States now accounts for only 7 percent of all flue-cured tobacco production in the world.

We must not forget that behind every economic statistic is a human element. The tobacco farmer bears the brunt of these changing forces with nowhere to turn. Unlike the companies that can, and most often do, pass their extra costs on to the consumer, the tobacco farmer must absorb any extra cost and hope for better days ahead.

During the past 6 years, the amount of tobacco allowed to be grown—also known as quota—has been cut more than 50 percent. In fact, not since 1874 has so little been grown.

Let me explain what that really means. The tobacco farmer's paycheck has been cut in half. They only get that if they can produce a good crop. The weather, disease, and insect infestation make it all the more challenging. Costs continue to rise. And making this even more unbearable is the increasing cost of leasing quota.

In North Carolina, more than 60 percent of quota is leased—a major factor in the increasing cost of production. As quota has continued to decline, farmers have sought to rent more quota in order to maintain the economic viability of their operations. The quota owners, trying to maintain their income stream with less, demand a higher price for the use of their quota. It is simple supply and demand, with an aim at meeting a bottom line. But you can only go on like this for so long—until you reach the breaking point.

This is where the growers are today. Many have hung on and have continued to produce in hopes that things will get better, knowing that if they got out they would have to sell their farm and liquidate other assets to settle up their debt. Even then, many would still be short.

Every week my office receives calls from farmers in desperation. They have worked hard all their lives, sent their children to college, contributed to their community, but now—now—all of that is passing before their eyes. There is a deep feeling of helplessness.

It is estimated that more than 60 percent of the tobacco farmers today will exit the business entirely if a tobacco buyout is achieved. Most are at retirement age, just hanging on a little while longer in the hopes of being able to pay off their debt. Those who would like to continue to produce know their market is shrinking, not because of a lack of demand in the world for tobacco but because the price of U.S. tobacco is too high as a result of the current tobacco program. All they can do is watch as Brazil and other countries take their market share.

Many say: Well, why don't they just produce another crop? The truth is, they are. North Carolina ranks third in agricultural diversification, behind only California and Florida. Our farmers are very diversified but, as other Members from farm States will attest, prices have been at historical lows for every commodity over the past 5 to 6 years—further exacerbating the problem for tobacco farmers in the Southeast.

Tobacco farmers are at a crossroads but, unlike most people who reach a point of decision in their lives, these salt-of-the-Earth folks have no options because the current tobacco program does not accommodate the changes needed for them to have an opportunity to survive in this new marketplace. To them it is like standing on the tracks while watching a train speed closer and closer and yet they can't move. They strain and try but they are shackled with nowhere to go.

This is why a tobacco buyout is so sorely needed. It will allow those who want to retire the opportunity to do so with dignity, the opportunity to know that all they have worked for has not been in vain. It will allow the widow whose sole source of retirement income is from quota rent and Social Security the opportunity to get a fair return in exchange for the taking of her quota. It will allow young farmers who want to continue to produce the opportunity to compete in the world market—and compete very well because of their skills.

Let me bring a little more perspective to the buyout of quota. This program was created in the 1930s. Right or wrong, the Federal Government has allowed quota to be bought and sold. Rather than investing in stocks and mutual funds, as many Americans have, tobacco farmers and their spouses have invested in quota over the years to prepare for their retirement. But they never predicted this massive change in the environment for tobacco that has led to such a steep slash in quotas. And how could they? Unlike a stockholder whose shares lose value if the market tanks, the quota holder has lost not only the value from this steep decline in quotas but the quota itself—for good. Unlike the stock market where time is a prudent investor's best friend, those who have invested in quota will never get that investment back.

In the legislation we are introducing today, the Federal tobacco program is eliminated. Quota owners are compensated for their investments—for the taking of their asset—just as the owners of the peanut quota were compensated with the peanut quota buyout in the 2002 farm bill.

Traditional producers are provided direct payments over a 6-year period in order to allow them to better transition into this new marketing environment—again, mirroring what Congress provided for all program crops under the 2002 farm bill.

There is no recreation of price supports or a new quota program. Rather, this legislation keeps tobacco production in traditional areas and on a traditional level of acreage while allowing private industry to develop insurance products so farmers will be better able to manage their price risk in the free market.

Perhaps the most important point for my colleagues in the Senate: Every penny that this buyout will require is

paid for in full by all manufacturers and importers that sell tobacco products in this country.

Status quo is simply not an option. If nothing happens this year, many of these farmers will be forced to give up all they have. After 6 years of loaning on collateral, there is nothing left for the banks to do except foreclose. There will be no holding out for just a little while longer. This may sound like rhetoric to some but it is the precise truth for countless numbers of farm families. The lenders who call my office confirm it. Status quo is simply not an option.

I thank Senator MCCONNELL and his staff for working so diligently to address this issue. It is vitally important that this legislation is achieved this year.

I am grateful, indeed, for Senator MCCONNELL's commitment and Senator BUNNING's commitment to making this a reality. I look forward to my continued work with them and all the other tobacco State Senators on this important legislation. It is either now or never. Many livelihoods hang in the balance, and with it the future of rural communities in North Carolina and other tobacco-producing States. These rural citizens, the very ones who have helped make this country great, have been caught in a battle between corporate interests, some greedy trial lawyers, and those whose true desire is to ban tobacco from the face of the Earth. Let us allow these farm families who have been trapped in this battle to move on with their lives. They deserve it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from North Carolina and the Senator from Kentucky for their important contributions to the development of this legislation. I also want to make clear to our colleagues this is a bipartisan bill. Senator EDWARDS of North Carolina, Senator HOLLINGS of South Carolina, Senator MILLER of Georgia, and Senator BAYH of Indiana are also cosponsors. In fact, there are 13 cosponsors of this important legislation. This is critical to our section of the country. We are going to work as intensely as we can to achieve the result for which our farm families are hoping.

With that, how much time remains on this side?

The ACTING PRESIDENT pro tempore. The Senator from Kentucky has 7½ minutes remaining.

Mr. MCCONNELL. I will reserve that time. I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time? Who yields to the Senator from Pennsylvania?

Mr. MCCONNELL. I will be happy to yield such time to the Senator from Pennsylvania as he desires.

SPEECH BY PETER R. ROSENBLATT

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Kentucky.

I have sought recognition to comment about a very profound speech which was made by former Ambassador Peter R. Rosenblatt to the American Jewish Committee in Detroit, a speech which has a unique historical perspective, makes an analysis of the new-fashioned war, the asymmetrical war of terror, comments about the trio of terrorists, those who harbor terrorists, and the possession of weapons of mass destruction, and has a perceptive analysis of the complex role of the United States on working through the complex relationships with so many countries and the United Nations as we assert our role as the world's sole superpower.

This is a speech worth reading very broadly. I ask unanimous consent that it be printed in the RECORD.

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

THEN, NOW AND TOMORROW: AMERICA'S ROLE IN A CHANGING WORLD

Throughout recorded history the relationship amongst states has been determined primarily by the largest and most powerful among them and by their efforts to protect their interests within a stable state system. That may seem a statement of the obvious but it has become an issue now, as never before. In order to understand how, why and to what extent such a basic condition of human history may now be in question we must reach back to the political roots of the modern world.

It all goes back almost two centuries ago to the Congress of Vienna in the immediate aftermath of the French Revolution and the Napoleonic Wars. The victors of those wars, Britain, Prussia, Austria and Russia, joined with the restored royalist regime of defeated France to establish a new European order which, to all intents and purposes, meant a new world order. It endured, with modifications, for nearly a century.

Towards the middle of the century a number of major events threatened to unravel the stable Great Power relationships that had prevented major wars. The popular revolutions of 1848 undermined or overthrew traditional regimes, Italy was reunified in 1856 and, most importantly, the reunification of Germany was completed in 1871.

In 1862 King William I of Prussia had appointed Otto von Bismarck as his Chancellor. In three brief military campaigns in seven years against Denmark, Austria and France, respectively, Bismarck expelled the three states with opposing interests in Germany and in 1871 the new German Empire was proclaimed by King William, now Emperor William I.

The German Empire emerged from this series of events as the leading military power of Europe and Bismarck set to work to secure the new state against the pressures that he knew would inevitably build up against the leading power. Chief among the sources of this pressure was defeated France, now in her Second Republic and deeply embittered by her humiliation on the battlefield and the loss of two border provinces. Bismarck realized that French hostility to Germany had become a fixture of European diplomacy and that France would ally itself with any of the other three Great Powers which might, at one time or another, wish to align itself Germany. Bismarck saw Germany as what he called a ''satisfied'' power which, after its unification, wanted nothing further from the other powers and was therefore primarily interested in a restoration of the stability that had prevailed since the Congress of Vienna. Understanding that in a constellation of five greats powers Germany must be, as he put it, on the side of the three, he saw that it would be necessary for Germany to ally itself with Austria-Hungary and Russia. Of the other two Great Powers, France was in permanent opposition and Britain, an active colonial rival of France, adhered to a policy of ''magnificent isolation'' and therefore wished to become no one's ally—and least of all France's.

When Bismarck's chancellorship ended in 1890, his brilliant diplomacy had secured Germany as the linchpin of Europe, the leading power in an alliance structure of three, on good terms with England and absolutely unassailable militarily. He had created a state system so stable that even the unrelenting hostility of France threatened neither the security of Germany nor the peace of Europe.

The old Emperor's grandson and successor, the arrogant and foolish young William II, failed to understand Bismarck's statecraft and in short order terminated the alliance with Russia, throwing that country into the arms of France and dividing the continent into two increasingly unstable alliance blocs, which left Britain holding precarious balance. William then alienated Britain by a vast naval building program designed to match Britain's navy. Thus in a few years time William II reversed Bismarck's diplomatic accomplishments, ending a century-long period of stability which had seemed to make a major war unthinkable. In its place the statesmen of the time substituted uncertainty, rivalry between two alliance blocs and fear, always the enemies of peace. With the destruction of Bismarck's state system the world lost a stability which we have not succeeded in regaining in 113 years. The outcome was World War I, in some ways the major tragedy of the 20th Century, which destroyed the optimistic and predictable post-Napoleonic world of our ancestors.

Out of that war there emerged an entirely new and different state system of five powers, an exhausted and depleted Britain and France, revolutionary Soviet Russia and the newest entrants into the field, Japan and the United States. After fifteen years of turmoil and economic depression the five were joined by a resurgent Germany under Nazi rule. Unlike the stable state system of the 19th Century the inter-war state system was highly volatile and ultimately collapsed due to the weakness and passivity of England and France, the isolation of the United States and the aggressive expansionism of the other three.

World War II produced an entirely new state system of two great powers with a global reach engaged in a titanic struggle for dominance and survival. The cold war was a zero sum game in which the advantage of one became a loss to the other. The defeat of the Soviet Union in this massive half century long struggle produced a result unprecedented in world history; a single global power militarily, politically and economically vastly more powerful than all of its actual or potential rivals.

It would be a mistake, however, to think that because this is so there is no longer anything resembling a ''state system'' in the world today. There are now five other powers each one of which could, under appropriate circumstance, present a challenge to the United States over time and with which we

must learn to live on a basis of mutual accommodation. These are Russia, Japan, China, India and Europe, when Europe becomes significantly unified to act with one voice. Each of these is currently unable to present a significant challenge to the United States because of severe internal problems which inhibit the full realization of its potential power.

Russia has not recovered from the wars, misrule, economic mismanagement and intellectual distortions of the 20th century.

Japan, having prospered under the U.S. defense umbrella through the mobilization of its ancient social and cultural system, now suffers the downside of the very same system.

China will eventually become a great military power through the diversion of resources which are needed to bring its entire population into the modern world and to overcome vast internal demographic, social, economic and even hydrological problems, any one of which would alone take a generation to cope with.

Much the same could be said of India whose agenda, in addition, is still dominated by the unresolved consequences of the subcontinent's messy partition in 1947.

Western Europe, though prosperous, is disunited and disarmed. It is as unprepared to assume the responsibilities of a great global power as England and France were in 1939.

The wonderful professors who taught me my freshman European history course at Yale were fond of saying that ''history does not repeat itself, only historians do.'' But certainly this maxim does not preclude even the devoted student of Professors Foord and Mendenhall from attempting the occasional historical analogy. We have arrived at this new phase of history very much more powerful in relation to the other major powers than was Germany after 1871. But like Germany then we are a ''satisfied'' power which wants nothing from any other. Our diplomatic task, like Bismarck's, is therefore to crate and preserve global stability. But our efforts to do so will have to be focused on new and different issues in addition to those which preoccupied Bismarck; and they are just as subject to mismanagement, the consequences of which could be even more catastrophic.

Now, why do I recite all of this history for you if the facts of today's world are so very different? Well, it is because the power politics of the 19th and 20th Centuries persist even as we cope with an entirely new class of threats arising from a totally different source. It's a bit like the science fiction movies in which a world preoccupied with its normal conflicts and rivalries is suddenly confronted with a unifying threat from outer space. But unlike the movies, there is little present evidence of a global appreciation of the magnitude of the threat.

The old world has not been abolished. International relations are still largely determined by the most powerful states—disproportionately our own. Just as in Bismarck's day, armies, economic power and cultural influence still determine the pecking order among states. Nor is there the slightest reason to expect that the major states will cease competing with each other.

But since September 11, 2001 Americans and a few others have become conscious of a new and terribly destabilizing overlay on the traditional state system which we are just in the earliest stages of understanding. I refer not just to terrorism, but more broadly to the ever increasing capacity of small, poor, weak states, terrorist groups, criminal organizations or even individuals to gain access to the most terrible weapons of mass destruction (WMDs) and to use them against the most powerful states or to hold them to ransom by threatening their use. The fact that increasingly powerful weapons are becoming ever easier and cheaper to buy or produce places them within the reach of the familiar rogue's gallery of terrorist sponsoring or harboring states and to irresponsible non-state actors. It is not terrorists or terrorist harboring states or WMDs alone that are so terribly menacing and destabilizing in today's world, but the conjunction of all three.

The use of these terrible WMDs has been largely avoided up until now through the doctrine of deterrence—the threat of retribution as terrible or more so than the initial assault. That doctrine has depended for its viability on an assumption that the nation to be deterred is managed by at least minimally responsible leaders with enough judgment not to attack when the cost of so doing would be unacceptable. But how does one deter a WMD assault by a fanatic or psychotic adherent of some doctrine who has no regard for his own or any one else's life? And how does one deter a group if one cannot find it or if it is only one of many capable of mounting a devastating attack without leaving a fingerprint? And even if one were able to identify and find such a group, and if one were willing and able to buy it off, how much security would that bring and for how long?

This new global configuration has come to be known as asymmetrical warfare, in which the weak attack the strong without hope of victory in the conventional sense. The attackers have only the power to destroy. When Prussia defeated France in the Franco-Prussian War of 1870 Germany replaced France as Europe's strongest power. When the U.S. won the cold war it became the sole superpower. If Al Qaeda or some successor were, God forbid, to deliver a WMD to New York, Washington or Chicago in a shipping container or suitcase and detonate it, it could kill many Americans and do grievous damage to the U.S. economy, but it could neither conquer the U.S. nor replace it. The purpose of terrorist organizations which pursue this form of warfare is, rather, the survival of enough of them to attack again and again. Chaos, not direct conquest, is the objective. The theory of asymmetrical warfare conducted through terrorism is to disrupt the stronger power's enconmy, social cohesion and morale though massive human and material casualties so as to ease the path for the terrorists' political or other objectives.

The administration has reasonably concluded that a successful defense against asymmetrical warfare requires us to seize and hold the initiative. We simply cannot wait until the fatal conjunction between terrorists and WMDs occurs, most likely in the relative security of a terrorist-harboring rogue state, and we are confronted either with a WMD attack or with blackmail threats of such an attack.

We are therefore required to embark on a non-traditional policy of searching out, seizing or neutralizing through diplomatic, covert or, if necessary, military means any rogue states, terrorists, fanatics, criminals and psychotics who we believe are actively attempting to acquire and use, or threaten to use WMDs, or to harbor, support, supply or passively tolerate those who would do so. The administration has called this a policy of pre-emption and has explained that the threat is too urgent and the costs of failure too grave to allow us to respond solely through the usual diplomatic requests for investigative assistance, extraditions and trials by jury. In other words, we are engaged in war—a type of war for which there is only one historical precedent—but a war nonetheless, and not a criminal prosecution.

The precedent is, of course, Israel, which has been made a testing ground for the strategy of asymmetrical warfare. All the ingredients are there, even if they have not worked as the attackers have planned. Terrorists are the delivery vehicles. The West Bank and Gaza were designed to be the harboring states after the Palestinian Authority was placed in charge of the so-called Area A under Oslo and after Israel's withdrawal from southern Lebanon. And WMDs? Well, fortunately none have yet been used, but not for lack of will. The Israeli authorities stopped an attempt to destroy Tel-Aviv's largest office building, the Azrieli Tower, and a fuel storage area north of Tel-Aviv. If either of these efforts had succeeded the casualties might well have matched those of 9/11.

The asymmetrical war of terror hasn't worked against Israel. The impact has been opposite that which the attackers expected. Israeli morale remains high, divisive internal disputes have been largely laid aside, and Israel has struck back with tremendous force and effect. Later, if not sooner, the impact intended for Israel may, in fact, be visited upon the attacker's own society.

Just as the war of terrorism being waged against Israel was a harbinger of the war now being waged against us and the rest of the civilized world, so Israel's reaction forecast ours. Israel long since identified this assault as a war rather than a criminal problem. Israel determined that it could not afford to wait until terrorist attacks occurred to take action against its sponsors. And it determined that preemptive action, in order to be effective, required military intervention in the harboring areas and elimination of those who plan, lead and execute the assaults.

The administration has made quite clear, through its actions more than its words, that it has gotten the message. It now rarely criticizes Israel for pursuing policies locally which it, itself, is pursuing globally.

Like Israel we are engaged in a twilight war in which we can be certain of the full support of only a few nations. Unlike Israel we do have some support from many others, but only we, Britain, Australia, Poland and a few others are willing to take the initiative in prosecuting the war with full vigor, and only our government does so with substantial popular support.

This circumstance requires that we maintain an international diplomatic posture and military force directed simultaneously at maintaining our political primacy and military superiority vis-à-vis other major powers, while waging active diplomatic and military warfare against terrorists, those who harbor or tolerate them and the proliferation of WMDs.

That is going to be expensive. We have seen that it took most of our West European allies only a decade of inattention and deeply slashed defense budgets to become nearly irrelevant to the global strategic equation. Far from cutting down on major weapons systems we are going to have to keep on developing new generations of them while we reconfigure a portion of our military to enable it to intervene anywhere in the world on very short notice to carry on the new war and, if necessary, to conduct what President Bush used to call ''nation building.''

We will also have to figure out how we are going to pay for all of this without killing the goose that has been laying all those golden eggs—by saddling ourselves with unacceptably high taxes or huge, escalating deficits.

It will also take active and imaginative diplomacy for us to avoid the fate of William II by alienating the rest of the world. We can afford to ignore or exclude a France which seeks actively to undermine our national interests. But only if we can ensure that it is

France and not we that becomes isolated in consequence. We cannot win this war without the active support of most, at least, of the world's major powers who see themselves to some extent as our rivals. And we will require at least the acquiescence of much of the rest of the world, including the Islamic world, whose governments are the terrorists' primary targets but many of whose ordinary people feel at least some sympathy for the terrorists' proclaimed objectives.

Well, that brings us back to our starting point this evening; our relationship with the world's other major powers. Anti-proliferation efforts and the war against terrorism cannot be conducted successfully by the U.S. alone. Therefore, it is necessary for us simultaneously to conduct our relationships and to contain our rivalries with these powers—perhaps it would be more accurate to say their rivalries with us—in the traditional manner on one level, even as we seek to lead them in a priority joint campaign against a global threat which some of them do not regard as seriously as we, but which has or soon will target all of them.

To some extent, this is happening even now. France, with which we have serious and perhaps enduring differences of a geopolitical nature, is cooperating with us in intelligence sharing in relation to the war on terrorism. China, which views us as a rival for influence in East Asia, is beginning to cooperate with us in dealing with the nuclear threat posed by its North Korean ally. And China and our old adversary, Russia, identify their campaigns against separatism amongst their Moslem minorities with our war on terrorism—a very uncomfortable fit for us.

The United Nations Security Council, seen after 9/11 as the logical instrument for organizing the world consensus against terrorism, proved incapable in the face of discord over Iraq among its permanent members. It was therefore bypassed, for much the same reason that it was bypassed during most of the cold war. Its structure no longer reflects the realities of the current global state system—if it ever did—and it is unlikely to realize its full potential until it, along with the entire United Nations system, is restructured. The UN today is a shambles, and not merely because Nauru with 6,000 citizens has the same General Assembly vote as China's 1.2 billion, nor because Libya is elected to chair the UN Human Rights Commission, or Iraq the Disarmament Commission or Syria becomes a non-permanent member of the Security Council, or that the UN and its agencies spend vast amounts of their time, effort and resources debating and implementing annual resolutions directed exclusively against Israel. No, the UN is a shambles because so much of what it does is irrelevant to the world's major issues that it lacks credibility even among those of its members who are chiefly responsible for its distortions.

But before we dismiss the UN as entirely irrelevant let us recall a few salient truths:

Metternich could conduct the Congress of Vienna, Bismarck the Congress of Berlin and Wilson the Versailles peace conference with four other principles and reshape the world. We are relatively far more powerful than any of those principals were, but we cannot be as effective as they were then in our war against terrorism, even with the co-operation of the 15 members of the Security Council.

The world has become so small and dangerous a place that we cannot even consider trying to stabilize it without the active participation of much of the rest of the world.

Therefore, if the UN did not already exist it would have to be invented. Only we, with our enormous power and influence, can make it work to focus the world's attention upon the current version of the threat from outer space.

So here we are, the most powerful nation the world has ever known; and what is our number one global problem? A collection of small to medium third world countries none of which has ever won a war against anyone, with economies a tiny fraction of ours, most of whose people are still living in the Middle Ages, and rag-tag gangs of fanatics and criminals which, if they should ever acquire the world's most powerful weapons, may be undeterrable and unappeasable and may use these weapons rather than submit.

The real authority in our world may be distributed—albeit unevenly—among six major powers. But neither we, as the first among them, nor a majority of them as in Bismark's alliance system nor all of them acting together, as in Vienna, Berlin, Versailles or last year in Security Council Resolution 1441, can absolutely ensure our safety. But we have no alternative but to try to create sufficient harmony among the world's principal powers to turn back the dark forces that threaten civilization.

TRIBUTE TO ASSISTANT U.S. ATTORNEY THOMAS P. SWANTON

Mr. SPECTER. Mr. President, I pay tribute to a very distinguished lawyer, Thomas P. Swanton, who has been in my office for more than 2 years on assignment from the Department of Justice, and I thank the Attorney General and the Department of Justice for this program which enables Senators to have excellent legal service and gives a different perspective to those who are assigned to a Senate office.

Tom Swanton is an extraordinary lawyer. He has come to my office with extensive trial skills and has done extraordinary work on counseling in my office, on post-9/11 legislation, on working on nominations, on legislative packages involving the death penalty, and the war on terrorism.

He has worked hard on these issues—each time jumping in feet first, soaking up knowledge, and moving legislation forward in this often complicated process. From his first assignment, he earned the respect of my staff, as well as mine.

Tom's primary duty consisted of working as my legal counsel for Judiciary matters where he handled a wide variety of issues. He also proved to be of invaluable assistance in crafting several pieces of post-September 11 legislation, all the while leading an investigation on terrorism financing. His skills and judgment in this arena are exceptional. My staff and I were constantly impressed with the wealth of knowledge he demonstrated.

Tom also provided a tremendous service to the people of Pennsylvania in working on issues such as class action reform and the Patents Bill of Rights. He demonstrated a remarkable amount of enthusiasm and initiative throughout his entire fellowship.

His dedication to each project was remarkable, and the assistance he provided to my office will not be easily matched. However, for Tom this level of dedication is par for the course. Since his graduation from West Point in 1983, he has consistently served our country. Prior to his service with the U.S. Attorney's office, Tom served in the United States Army and is currently a LTC in the Army Reserve.

Tom's personal record is equally distinguished. Those who know him well consistently praise his qualities as a devoted husband and father of four beautiful children.

I urge my colleagues to join me today in commending Tom Swanton for his service as a legal fellow and for his devotion and leadership to our country.

TERRORIST PROSECUTION ACT

Mr. SPECTER. Mr. President, this morning a group of Senators met with Israeli Prime Minister Ariel Sharon in a very informative session as part of Prime Minister Sharon's visit to the United States where yesterday he met with President Bush.

An item which has been worked on for many years has been the effort to try in the U.S. courts Palestinian terrorists who murder U.S. citizens abroad. The Terrorist Prosecution Act, which I wrote back in 1986, provides for exterritorial jurisdiction where U.S. courts have jurisdiction to try a Palestinian terrorist who murders an American citizen.

There are two prominent cases which could lend themselves to this approach. One case involves a Palestinian terrorist who is in the United States, where we have jurisdiction over him, where we need the cooperation of Israel in providing the witnesses. It was a matter which I discussed this morning with the Prime Minister, and we are working to see if we can secure that kind of cooperation. It was pointed out that sort of cooperation has been present in the past, and we are seeking to bring that about here.

Another possible prosecution would involve a Palestinian terrorist who confessed on television, so there is no issue about the voluntariness of his confession. There is a potential problem in that Israel opposes the death penalty and characteristically will extradite only where there is assurance from the country receiving the individual that the death penalty will not be sought. I believe there are exceptions under Israeli law where Israeli national security is involved. I believe the threat of the war on terrorism would qualify under that section.

There is a second aspect, and that is the vindication of U.S. rights where American citizens are murdered by Palestinian terrorists in Israel. I think there is a very real issue about vindicating U.S. interests. We are going to continue to pursue that line.

One other observation in the brief amount of time remaining. The meeting between President Bush and Prime Minister Ariel Sharon was a very warm and a very good meeting. One of the items which I think bears a little focus is the unusual rapport between these two men, where President Bush referred to Prime Minister Sharon by his

first name ''Ariel,'' and Prime Minister Sharon reciprocated by referring to President Bush as ''George.'' I think that signifies an unusually warm relationship.

It brings to mind comments by Prime Minister Begin who visited the United States back in June of 1982 and met with a group of Senators, and at that time made a comment that President Reagan had asked Prime Minister Begin to call President Reagan ''Ron.'' Prime Minister Begin said that he deferred, which led President Reagan to say to Prime Minister Begin: Well, Menachem, if you don't call me Ron, I won't call you Menachem.

Prime Minister Begin went through that circle but refused to call the President by his first name, referring to the President as a Head of State.

I think it is a very encouraging sign when the President of the United States and the Prime Minister of Israel are on a first name basis. That bodes very well for the relationship.

I note the time of 1 o'clock has arrived.

The ACTING PRESIDENT pro tempore. The time controlled by the Senator from Kentucky has expired.

Mr. SPECTER. Mr. President, I yield the floor in any event.

EXECUTIVE SESSION NOMINATION OF MIGUEL A. ESTRADA TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I believe the regular order is for the minority to be given a half hour on the proposal to proceed with the Estrada nomination; is that correct?

The PRESIDING OFFICER (Mr. HAGEL). The Senator from New York has one-half hour under his control.

Mr. SCHUMER. Mr. President, we are back to voting on whether to proceed with the Estrada nomination. Before I get into the merits of Mr. Estrada, I want the record to show that we have now confirmed 140 of the President's nominees. By the end of the week, it could be over 150. By the end of the week, we may be blocking as many as 4. So right now it is 140 to 4 and could be at the end of the week 150 to 4. That is a record that even Yankee fans would be jealous of.

We have this view of some, including the White House, that we are obstructionist because we have tried to block 4 out of 140 nominees. My guess is if James Madison or George Washington or Benjamin Franklin or any of the Founding Fathers were looking down on this Chamber, they would say: Why are they blocking so few? We wanted the President and the Senate to come together on judicial nominees.

It outlines in the Federalist Papers that the Founding Fathers didn't want the President to have sole power to choose judges, nor did they want the Senate to be a rubber stamp. In fact, one of the first nominees, John Rutledge from South Carolina, was rejected by the Senate, which contained a goodly number of the Founding Fathers themselves because they were appointed to the Senate in those days right from the Constitutional Convention. Rutledge was rejected because of his views on the Jay Treaty.

So this idea that unless we find the candidate to have some kind of criminal record or has done something unethical, we should not be examining that record or speaking to that record makes a good deal of sense. President Bush is a classic case of what the Founding Fathers were worried about in the way he has chosen his nominees because the Founding Fathers, I believe, wanted nominees to be from the American mainstream. They wanted them to interpret the law, not to make law.

There have been times when judges have leaned to the far left—the 1960s and 1970s—and they now lean to the far right. The bench becomes infused with ideologues and ideologies, and those judges want to make law, not interpret law—very much against what our Founding Fathers wanted. That has been the case of President Bush. I don't think it is disputed that he has nominated judges through an ideological prism more than any President in our history. You don't have a sprinkling of Democrats or liberals or even moderates—you have a few moderates, but the overwhelming majority of the President's judges have been hard core, hard right. A few of them have been so far over that they don't deserve nomination. They include Miguel Estrada and Priscilla Owen, and they include, in my opinion, two nominees we may vote on later this week: Carolyn Kuhl, and the attorney general of Alabama, Pryor.

If you look at the records of these judges and you put scales, left to right, 10 being the most liberal and 1 being the most conservative, these judges are ones, to be charitable. When Bill Clinton nominated judges, he nominated mainly sixes and sevens, people who tended to be a little more liberal, but were moderate and mainstream—very few legal aid lawyers or ACLU charter members, much more prosecutors and partners in law firms.

This President, for whatever reason, has chosen to nominate judges way over to the far right side.

I am proud of what we have done in this Chamber. I am proud that we are bringing some moderation to the bench. I am proud that we are following the wishes of the Founding Fathers and not just being a rubber stamp. For those who try to beat us with a two-by-four, by calling names, by saying we are anti-Black, anti-Hispanic, anti-Catholic, anti-women, when we oppose a judge who happens to be of that description, we are not going to win. We believe in what we are doing. We believe it is mandated by the Constitution. We believe we are following the will of the American people who don't want judges either too far left or too far right.

I assure you, Mr. President, and I assure President Bush, and I assure my colleagues in the Senate that we will continue to do this. You can prolong this and put up all the visuals and nasty ads you want, like the one just run by one of the President's associates in Maine, accusing those who will vote against Mr. Pryor of being anti-Catholic, including good Catholics in this Chamber. That is wrong. In fact, I think it is reprehensible. But I tell the other side, not only will it not work, if anything it strengthens our desire to do the right thing.

Let's talk about Miguel Estrada. This nominee was unusual in this sense: He had no real record because he had not been a judge previously, nor written law articles. By many reports, his views were very extreme. But when I approached the hearings for his nomination, and when many colleagues did, we were willing to see what he thought. The bottom line is that he didn't tell us what he thought. The bottom line is that when he was asked very simple questions on issues that he had an obligation to expound upon, such as: What is your view of the first amendment; how broad or narrow should it be; what is your view of the commerce clause; what is your view of the relationship between the States and the Federal Government; he kept hiding behind this idea that canon 5 of lawyers ethics says you should not comment on a pending case if you are nominated to be a judge, so that he could not comment on anything. If Mr. Estrada were asked how should Enron be treated, he would rightfully say: I cannot answer that because I might judge Enron on the bench. But if he is asked what his views on corporate ethics are, of course, he has an obligation to answer that question. He did not. And doing so was an affront, not to any one individual, but to our Constitution.

If Mr. Estrada were correct, then probably most of the judges we have nominated in the last two decades should be cited for violation of canon 5. They all answered these questions. Judges nominated by President Bush before and after Estrada have answered these questions. So why would Mr. Estrada not come clean and tell people what he thought? Why would he not do what every American has to do?

When every American applies for a job, the employer says: Please fill out this questionnaire. Can you imagine someone saying I refuse to fill out the questionnaire in getting the job? It would be rare to do that. That is what he did. He is applying for a job—not just any job, but one of the most important jobs this Government has—a Federal judge, with awesome power. He kept refusing to fill in the job application form by answering the questions we had asked.

We then came to the question: How could we tell what his views were? We

did not stop. We asked him, and we asked the Justice Department to give us some documents about issues on which he had worked when he was in the Solicitor General's Office. There were some in that office who reported, again, that his views were way over, that they were extreme, and we were refused our request.

I will tell you this, Mr. President, and I will tell every Member of this Chamber, as long as Mr. Estrada refuses to answer questions about issues over which he is going to have virtual life and death power in terms of governing the American people and we do not know how he feels, we are going to continue to block him. We are proud of that fact.

At first when it started, most people said: Don't do it; politically they will attack you—and this and that. I told my colleagues I thought we ought to do it because it is the right action to take, regardless of politics.

A funny thing has happened. Politics seems to be rolling in our direction. People are beginning to understand that this President is not nominating mainstream, moderate judges. People are beginning to understand that there is a desire to pack the courts and turn the clock back.

Congress will not turn the clock back. The President himself will not turn the clock back. We are elected. But if you put judges in, they can turn the clock back for a whole generation. There is a view out there that this is happening.

What started out as something done out of a deep conviction remains a deep conviction, and our view about the direction of this country, our view about the appropriate role of the Senate in the nomination process of judges is not ending up to be the political loser that some prognosticated.

We will continue to block this nomination. If nominees stubbornly and arrogantly refuse to answer legitimate questions of members of the committee, we will not allow them to become judges. That is not our doing in an ultimate sense; it is their own doing. If nominees are so far out of the mainstream that it is quite clear they will make law, not interpret the laws that others have made, we will oppose them as well.

We will vote on the nomination of Mr. Estrada for the seventh time. I make the point that my good friend from New Mexico was saying we have to move the Energy bill forward. Our majority leader is saying we have to move the Energy bill forward, but we are taking out time to vote on this nomination again. The purpose I do not know, a purpose grander than I can think of. But we are here and we are doing it.

No one has changed his or her minds. Mr. Estrada has not answered the questions, and as long as he continues not to answer these important vital questions, he will not be approved.

Mr. President, I reserve the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, I will use some of the allocated time on the nomination to make a comment. We have been debating the Energy bill for the last couple of days and, of course, for good reason; the distinguished majority leader has said he wants to move this legislation forward and that we ought to do all we can to find a way to resolve the many issues that are still pending on energy prior to the end of the week.

I cannot think of a more counterproductive effort, a more counterproductive device, than to bring back a nomination that has already been before the Chamber six times. I certainly am not questioning the majority's motives. I do not question their desire to finish the Energy bill, but I do question the management of our time when I think with every bit of sincerity our Republican friends tell us they want to finish this bill.

We are now in a quorum call in the middle of the day on a nomination that has already been before the Senate six separate times this year. Six times we have debated whether Miguel Estrada ought to be required to do what every nominee is required to do, which is answer the questions and fill out the job application. Six times, without equivocation, Senators said you do that and we will take another look at your nomination.

Here we are now for the seventh time, in the middle of an energy debate that we are told by the majority must be done, debating once more this very issue.

That is not all. Yesterday we debated Priscilla Owen, and I think that was for the third time. Tomorrow we may debate another nominee, William Pryor, for the first time. Who knows what could come on Friday.

The majority needs to show us they are truly intent on working with us through these many important issues before they can convince us that they want to finish the job on energy.

It is 1:25 and for the life of me I cannot understand why we are in the middle of a quorum call on a judicial nomination that has come before us on six other occasions. That is not good time management. It is not a good practice. It obviously has not generated much interest, and I think it is a huge waste of time.

I only come again to express my disappointment and my puzzlement, my lack of ability to answer the question why is this happening now, when we have so much work to be done.

I will make another prediction. This vote will not change. If we do it 18 more times, it will not change. So we can continue to waste our time or we can continue to find ways to work together to use our time a lot more effectively than we are using it now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the minority leader for his comments on this Miguel Estrada nomination.

As a member of the Senate Judiciary Committee, I can say we have been very cooperative with the Bush administration. Of the 146 judges, if I am not mistaken—the minority leader can correct me but I think it is in the range of 140, and then there are five or six judges in another lifetime category that some add in, but whatever the number, 140, 146, it is significant—only two nominees to date have been held.

We have a responsibility under the Constitution, as Members of the Senate, to advise and consent to the President's nominees, and that means more than a rubberstamp. In the Miguel Estrada case, he is a person with extraordinary academic credentials and an extraordinary legal background who has refused to provide the Senate and members of the Judiciary Committee important writings he generated which would reflect on his view of the law. He has said we cannot see them.

A few months ago, when we first considered this nomination, the Republican Senator from Utah came to the floor—not Senator HATCH but his colleague Senator BENNETT—and suggested maybe the answer to this impasse is for the White House to release these documents for us to review, and once having reviewed them we can decide whether to move forward with this nomination.

I was here and I said I applaud that; I think that is a reasonable standard of conduct. Within hours, the White House came out and said publicly, we will not release them. We do not believe we have to, and we are not going to generate this kind of paperwork that may make Estrada's nomination more controversial. That was the end of the story. That has been the end of his nomination. So it was a conscious decision by the White House not to release documents which may give us an insight into Miguel Estrada and his lifetime appointment to one of the highest Federal courts in the land.

In the Priscilla Owen situation, she is a classic judicial activist. We have nominated and approved scores of conservative judges for the Bush administration. She reached a new level, a level of judicial activism which has put her in a special category with Miguel Estrada.

Now because of those two nominees being held up, we see practices in the Senate Judiciary Committee that are unprecedented. Rule 4, which is this obscure rule of the committee, was put in place by Senator Strom Thurmond

years ago to protect the minority. It is now being ignored on a regular basis, twice in the last few months by Senator HATCH. This rule basically says if the majority wants to, they are going to move a nominee regardless of whether there is minority opposition. That was never the practice of the committee. It is now. It is an effort by the Bush administration and their supporters and the Senate Judiciary Committee to basically ignore the precedent.

In the next couple of days, we are going to consider two other nominees, and they are fraught with controversy. William Pryor of Alabama has become a lightning rod on Capitol Hill. If one looks at his background, what he has done as attorney general in the State of Alabama, they can understand why. This is a man who goes far beyond conservatism. His positions on issues far and wide are so controversial. I said during the course of the committee, when one looks at the controversial positions that have been taken by William Pryor, the Attorney General of Alabama, it is like an all-you-can-eat buffet. You do not want to fill up your plate early on with his controversial statements, discriminating against women, because you have to save room for his controversial statements when it comes to the environment and to civil rights.

When it is all over, you are going to need more than one plate to get through the William Pryor all-you-can-eat buffet of controversial positions.

This man is headed for the floor. How did he get here? He got here by circumventing an ethics investigation which was not completed. A decision was made by the Republicans in the Senate Judiciary Committee that we do not need to finish that investigation; we are just going to send him to the floor. Then they went through that shameful display on the issue of his religion, which I hope never again is brought up in the Senate Judiciary Committee but was brought up for William Pryor. Finally, they jammed it through, strong-armed his nomination to the floor, under rule 4.

So here we sit in the minority and what are we supposed to do? Are we supposed to ignore these tactics, this departure from the precedent of the Senate Judiciary Committee? Are we supposed to ignore the fact that at least two, maybe four or five, of these nominees clearly would never have passed through the Senate Judiciary Committee under any other circumstances but for these tactics? I think if we did that, we would be ignoring our constitutional responsibility.

Whether the nominee is William Pryor, Miguel Estrada, or Priscilla Owen, time and again we have to stand and accept our constitutional responsibility to really stand in judgment as to whether these individuals deserve a lifetime appointment to the Federal court. Miguel Estrada, until he is ready to come clean with his writings so we understand who he is and what he believes, I am afraid is going to face the same fate over and over again.

The Republicans can call this to a vote as often as they want.

Our Senate Democratic leader, Senator DASCHLE, is right: The Democrats will hold fast to the position. Until he is forthcoming and honest and open as to who he is and what he believes, he does not deserve this high appointment to a Federal circuit court. That spells out why we are here.

I also add, I listened for days last week and this week as the Republicans complained we were not spending enough time on the Energy bill; we were finding all sorts of excuses not to get down to the work of the Energy bill. We are certainly not on the Energy bill right now. We were not yesterday when we voted on Priscilla Owen, nor will we be later in the week when other judicial nominations come to the Senate. Any excuse will do to get off that bill, it seems. I had hoped we would stay on it and do our work. I offered my amendment early. Others have done the same. We will continue to make the symbolic votes.

If we are going to have true comity in this institution, if we are going to have a cooperative relationship, it will require us to deal with this on a bipartisan basis. I urge my colleagues to continue to oppose the nomination of Miguel Estrada.

Mr. LEAHY. Mr. President, yesterday the assistant minority leader made some cogent observations about how the Senate is being required to expend hours on matters that are leading nowhere and take away from debate on the Energy bill. If the Republicans were truly serious about finishing the Energy bill this week, they would not be scheduling hours of debate on contentious judicial nominations. Nor for that matter would they break for several hours yesterday to have a pep rally at the White House. From the Senate schedule, an objective observer would have to think it is more driven by partisanship and trying to score political points than a desire to make progress on the business of the Senate and on the issues that are the most important to the American people.

This week we have not proceeded to the foreign operations appropriations bill, which contains a number of matters of overriding importance to the country and the world, although Chairman MCCONNELL and I have been ready to proceed. We have not proceeded to the energy and water appropriations bill or the other appropriations matters that need to be concluded soon for the Government and Government programs to continue to operate in the fiscal year that will soon be upon us. Usually we devote July to appropriations matters but the Republican leadership has chosen to take this week off in that regard.

Today we must again return to the controversial nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. The last cloture vote on this nomination was scheduled on May 8. The only thing that has changed since that unsuccessful vote is that the administration and some Republicans in the Senate have ratcheted up their unprecedented partisanship and the use of judicial nominees for partisan political purposes.

I spoke yesterday about the new low to which some Republican partisans have stooped in political ads and charges that should offend all Americans. I again challenged Republicans and the administration to disavow those despicable efforts but, instead, they are choosing to continue to support the smear campaign of insult and division. Yesterday I inserted into the CONGRESSIONAL RECORD some of the articles and editorials that comment upon this most troubling development.

Yesterday I also had the opportunity to meet with representatives of the Interfaith Alliance. I thank them for condemning these unwarranted attacks and for standing up for the Constitution and the first amendment rights of all Americans. Reverend Gaddy, Father Drinan, Reverend Veazy, Right Reverend Dixon, and Rabbi Moline understand what is afoot and have spoken out in the best tradition of this country, and I thank each of them.

I do not expect the vote on this nomination to change today. Nothing has been done to accommodate Senators' concerns. No arrangements have been made to provide access to the documents requested in connection with this nomination that are available to the administration and that Mr. Estrada said he had no objection be provided. Thus circumstances have not changed since the first vote on this nomination or the most recent vote back in May.

There continues to be, in the phrase favored by the White House, ''revisionist history'' regarding the precedent of providing the Senate with legal memos to the Solicitor General and by the Solicitor General and similar documents in connection with nominations for both lifetime and short-term posts. Senator SCHUMER, Senator KENNEDY, and I have detailed those earlier precedent in earlier debate. It has not been refuted. It cannot be refuted. Facts are stubborn things. Nonetheless the administration and Republicans continue to ignore the facts seeking political gain and have chosen to use Mr. Estrada as a pawn in their efforts. That is unfortunate and regrettable.

We have worked hard to try to balance the need for judges with the imperative that they be fair judges for all people, poor or rich, Republican or Democrat, of any race or religion. This has been especially difficult because a number of this President's judicial nominees have records that do not demonstrate that they will be fair and impartial. In response, the White House and its allies have bombarded the airwaves with all manner of misleading information to try to bully the

Senate into rolling over and rubberstamping every one of its these nominees.

The claims that we are anti-Hispanic or anti-Catholic or anti-woman or anti-Christian are part of Republican politics of attack and division as taught by Presidential advisor Karl Rove and as implemented by the administration's allies in the Senate and C. Boyden Gray and his so-called Committee for Justice, who paid for the most recent volley of ads. These dirty tricks are nothing new to this gang. Earlier this year, Mr. Gray and his group ran ads insinuating that Democrats oppose the nomination of Mr. Estrada because he is Hispanic, ads which were refuted by the courage of many Latino leaders and Latino civil rights groups which spoke out against confirming Mr. Estrada. Mr. Gray's group recently ran print and radio ads calling Democratic Senators anti-Catholic because they oppose President George W. Bush's most controversial and divisive appellate nominee, Alabama Attorney General Bill Pryor. These are despicable and false charges intended to distract the public from the serious evidence that Mr. Pryor was chosen because he would be an unfair, results-oriented judge. This type of demagoguery, in its shameful effort to mislead and inflame, should be disavowed.

The cynical political games are all the more disappointing from a President who campaigned claiming that he was going to be a uniter not a divider and set a new tone in Washington. The reality is that on nominations this administration goes out of its way to choose divisive nominees. The tone set by the White House has been unilateral and been marked by a refusal to consult with Senators in advance of nominations and to accommodate concerns raised.

Senate Democrats have more than demonstrated our good faith. We inherited 110 vacant seats in the Federal judiciary in July 2001, vacancies that were increased and perpetuated under Republican control of the Senate. In 17 months, Democrats worked hard to have the Senate confirm 100 of President Bush's judicial nominees.

Second, as of July 28, 2003, the Senate has confirmed 140 of President Bush's judicial nominees, including 27 circuit, or appellate, nominees. This is more circuit court judges confirmed at this point in his Presidency than for his father, President Clinton, or President Reagan at the same point in their Presidencies. It is more judges than a Republican-controlled Senate allowed be confirmed in any 3-year period serving with President Clinton.

We are finally below the number of vacancies Republicans inherited in 1995, and earlier this year we reached the lowest number of vacancies in the Federal courts in 13 years. This from the 110 vacancies that Democrats inherited from Republican obstruction. Indeed, today there are more full-time Federal judges serving on the Federal courts than at any time in U.S. history.

These confrontations and problems with nominations are of the White House's own making. It is true that some of this President's judicial nominees with troubling records have not been confirmed. It is also true that Democrats have supported as many nominees as we could responsibly. Democrats have not been spoiling for a fight.

We did not seek out the nomination of Judge Pickering or Judge Owen. But we treated them fairly and much more fairly than Republicans had treated President Clinton's nominees to the Fifth Circuit by according them hearings, debate, and a committee vote. They were rejected. For the first time in history a President nonetheless renominated those rejected by the Senate Judiciary Committee. That it was unprecedented is part of the difficulty with these controversial and divisive nominees. Justice Owen is someone whom Republican judges on the Texas Supreme Court criticized as a judicial activist.

We did not seek out the nomination of Miguel Estrada, but we accorded him a hearing and sought to consider the nomination responsibly. We are being required to vote without all the information we need. The committee did vote, which was more than was accorded President Clinton's nominees to the DC Circuit. The Senate is resisting a vote without knowing more about Mr. Estrada's work and judgment. Democrats did proceed to vote on and confirm the nomination of another to the DC Circuit in spite of Republican obstruction of President Clinton's nominations to that important court.

We did not seek the controversial nominations of Jeffrey Sutton, Timothy Tymkovich, or Dennis Shedd, but we proceeded with them. They each received more negative votes than required to prevent cloture, but we proceeded. We proceeded on Deborah Owen, Michael McConnell, and a number of strongly conservative and controversial nominees.

We have not chosen these fights this week. They have been staged by the Republican leadership. We have fought them for the sake of the American people, the independence of the Federal courts, and to preserve the Senate as a check on this expansive court packing by the Executive.

Republican partisans have responded to the sincere concerns of numerous Senators about the records of controversial nominees by demanding that Senate rules be changed to force votes on the most extreme nominees. This effort is in the wake of repeated violations by Republicans of longstanding committee rules and agreements to allow sufficient time to review the FBI investigations and legal careers of the President's nominees for these powerful positions with lifetime tenure. With the Constitution's guarantee of lifetime jobs for judges, we cannot correct mistakes made in a slipshod confirmation process.

In their quest to limit public scrutiny, Republicans have invented interpretations of the Constitution without any basis in tradition or history. Although they now contend that the Constitution requires an up-or-down vote on every judicial nominee, the plain facts are that they blocked up-or-down votes on more than 60 of President Clinton's judicial nominees and more than 250 of his nominees to short-term positions in his administration.

Did they engage in wholesale constitutional violations during President Clinton's Presidency? I did think their one-person filibusters by anonymous, secret holds were unfair, and that is why I made blue slips public as chairman and have supported ending anonymous holds.

Our Democratic Senate leadership worked hard earlier this year to correct some of the problems that arose from some of the earlier hearings and actions of the Judiciary Committee in violation of rules that have served the committee and the Senate well for a quarter of a century. However, once again just last week, the Republican members of the Judiciary Committee decided to override the rights of the minority and violate longstanding committee precedent under rule IV in order to rush to judgment even more quickly for this President's most controversial nominees. That was another sad day in committee. And yet Republicans persist in their obstinate and single-minded crusade to pack the Federal bench with right-wing ideologues, regardless of what rules, longstanding practices, personal assurances, or relationships are broken or ruined in the process.

These rules and precedents are not just ''inside baseball.'' They are the core of the rule of law in our system of government. If those elected will not follow rules to confirm judges or create statutes, then we have little hope that the rule of law will prevail in our courts and in our country. Republicans in the Senate seem intent on sacrificing the role of the Senate as a check on the Executive for the short-term political gain of this White House.

The Framers expressly protected Members' freedom of debate in the Constitution. The Constitution also gives the Senate the power to devise its procedural rules. There is no requirement in the Constitution that matters be decided by simple majorities or that all bills or nominations be brought to a vote.

As the Supreme Court has recognized that ''Certainly any departure from strict majority rule gives disproportionate power to the minority. But there is nothing in the language of the Constitution, our history or our cases that requires a majority to always prevail on every issue.'' Gordon v. Lance, 403 U.S. 1 at 6, 1971, finding constitutional local voting rules requiring a majority of 60 percent to pass a measure. The notion that every nominee is

entitled to a vote on the Senate floor is defied by decades of practice over the past two centuries.

Filibusters and other parliamentary tactics to delay matters were known to the Framers. There was even a filibuster in the first Congress over locating the Capitol.

More importantly, the Framers created the Senate to be unique from the House in the protections for the rights of each Senator and the stability and continuity in this body. Unlike the House, the Senate is not reborn every 2 years but two-thirds of its Members remain through every election. The Framers gave the Senate special powers, as a check on the executive branch, to confirm nominees or to decline to do so, affirmatively or by inaction.

History shows that since the early 19th century, nominees for the highest court and to the lowest short-term post have been defeated by delay, while others were voted down. Not even President Washington's nominees were all confirmed. One of President Washington's short-term nominees, Mr. Benjamin Fishbourn's nomination to the port of Savannah, was defeated on the floor of the Senate because of the opposition of both Georgia Senators. Many Supreme Court nominations were defeated through inaction or delay, rather than by failed confirmation vote.

For 160 years, until 1949, there was no way, other than through unanimous consent, to bring a judicial or executive nomination to a vote. For the past 86 years, the Senate has required a vote of two-thirds to end debate on changing any rule of procedure, made explicit in 1959. For the past 54 years, the Senate has required more than a simple majority, ranging from two-thirds to three-fifths, to bring a judicial nomination or legislation to a vote. For the past 25 years, the Senate has required three-fifths of the Members sworn to vote to end debate on any matter, other than amending the rules, two-thirds.

The Senate and the Nation not only have survived all of these years while respecting freedom of debate but have thrived, strengthening our democracy by ensuring a forum that honors the passionate views and interests of a minority of its members while checking the caprice of temporary majorities, particularly regarding the lifetime appointments to our Federal courts.

As the late, eminent Professor Lindsay Rogers observed, ''the fact of the matter is . . . that, as the much vaunted separation of powers now exists, unrestricted debate in the Senate is the only check upon president and party autocracy.'' The American Senate 164, 1926. We would all do well to remember that, as the scholar Charles Black observed, ''If a President should desire, and if chance should give him the opportunity, to change entirely the character of the Supreme Court, shaping it after his own political image, nothing would stand in his way except the United States Senate.''

If we give up the genius of the checks and balances of the Constitution as embodied in the role of the Senate exercising its independent judgement to confirm or reject lifetime appointees, by vote or inaction, the American people will be the losers. Yet some Republicans seem intent on inflicting more damage, to the process, to the Senate, and to the independence of the Federal courts.

Republicans claim there has never been a filibuster of a circuit court judge. This is false. As recently as 2000, Senator FRIST and his Republican colleagues filibustered two of President Clinton's circuit court nominees. One of those nominees, Judge Richard Paez, a Mexican American nominated to the Ninth Circuit was subject to filibuster procedures and other blocking tactics that prevented him from being confirmed for more than 1,500 days. That was a circuit court filibuster, even though it was ultimately unsuccessful. At the same time, Republicans were simultaneously filibustering the nomination of Ninth Circuit nominee Marsha Berzon. This was in addition to nearly 2 dozen other circuit court nominees who were languishing or defeated in committee without a vote in committee or on the floor as well as dozens of other district court nominees.

Republicans who now claim that the Constitution requires a majority vote on every judicial nominee should explain how Republicans through secret objections, blocked votes on more than 60 of President Clinton's judicial nominees, including nearly 2 dozen circuit court nominees. For Republicans to claim that the process is now broken because a few of President Bush's circuit court nominees are being debated in the light of day, rather than defeated in the dark of night, is breathtaking in its hypocrisy.

Republicans also blocked more than 250 of President Clinton's nominees to short-term positions in his administration. For example, they successfully debated to death his nominations of an ambassador, Sam Brown, and of Dr. Henry Foster to be Surgeon General, in addition to the other more than 300 judicial or executive branch nominees blocked in the dark of night by one of more Republicans. I mention this because I just cannot imagine how they can get away with these false claims, which the most recent history of nominations clearly refutes. This data is publicly available.

The Senate, unlike the House, has never had a rule allowing a simple majority to force a vote on any matter. Only for the past 54 years have Senate rules allowed fewer than the agreement of all Senators to force a vote on a nomination, reducing the number needed to end debate from unanimous agreement to the current number, 60 votes. These rules help ensure that lifetime appointees have wide, rather than narrow, support because consensus nominees are more likely to be fair than extremely divisive ones.

The nomination we vote on today, that of Mr. Estrada, is another divisive nomination of this President. Despite the overtures that have been made to the White House to ask them to honor past precedent and provide Mr. Estrada's memos to the Senate, the White House has refused to budge. Instead of honoring that precedent, the White has sought to break other precedents and understandings in the quest to win confirmation at any cost.

Just last week, the White House signaled again its refusal to seek compromise or accommodation for the sake of the fairness of the courts. The President nominated two more controversial individuals to the DC Circuit. This is just one more sign in a long line that this White House is determined to continue to divide the American people with its nominations and to pack the courts in order to win judicial victories for its ideological agenda and its allies at the expense of fairness for all.

Since the administration has not provided the information requested more than a year ago with respect to Mr. Estrada, nothing has been done to alleviate concerns about this nomination.

Mr. HATCH. Mr. President, I rise today to speak on the nomination of Miguel Estrada for the United States Court of Appeals for the District of Columbia Circuit. It is truly a sad record that the Senate is now being obstructed by multiple filibusters on judicial nominees and that we are required to conduct an unprecedented seventh cloture vote on this particular extremely qualified nominee.

Let me state that a clear majority of this body supports this nomination, as has been demonstrated in the past six cloture votes. So it is regrettable that a minority number of Senators have followed their script of extraordinary obstructionism to prevent the Senate from concluding the debate on this nomination and proceeding to a final vote.

It has now been 6 months since Mr. Estrada's nomination was reported by the Judiciary Committee and placed on the Senate Executive Calendar. It has been nearly 8 months since he was renominated by President Bush. It has been more than 10 months since his hearing before the committee, and I has been more than 2 years since he was first nominated by President Bush on May 9, 2001.

In all of that time my Democratic colleagues have had unlimited opportunities to make their case. Some of them oppose him; others support him. But one thing has remained clear through this debate: There is no good reason to continue this route of obstruction by denying Mr. Estrada an up-or-down vote.

We are at a troubling point in Senate history. Over the past few months I have spoken frequently on the calculated effort to stall action on President Bush's judicial nominees. There

have been efforts to bottle up nominees in committee, to inject ideology into the confirmation process, to delay by demanding production of all unpublished opinions of nominees who are sitting Federal judges and making demands for answers to questions that are unanswerable. And, in the case of Mr. Estrada, opponents have demanded he produce confidential internal memoranda that are not within his control. When these tactics have failed, opponents have turned to their ultimate weapon—the filibuster.

Filibusters of judicial nominees allow a vocal minority to prevent the majority of Senators from voting on the confirmation of a Federal judge, a prospective member of our third, coequal branch of Government. It is tyranny of the minority, and it is unfair to the nominee, to the judiciary, and to the majority of the Members of this body who stand prepared to fulfill their constitutional responsibility by voting on Mr. Estrada's nomination.

I am not alone in my disdain for delaying or defeating judicial nominees through a cloture vote. I think that it is appropriate at this point to note that many of my Democratic colleagues argued strenuously on the floor of the Senate for an up-or-down vote for President Clinton's judicial nominees.

The distinguished minority leader himself once said, ''As Chief Justice Rehnquist has recognized: 'The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.' An up-or-down vote, that is all we ask. . . .''

The ranking member of the Judiciary Committee echoed these sentiments when he said, ''. . . I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.''

Another one of my Democratic colleagues, Senator KENNEDY, himself a former chairman of the Judiciary Committee, had this to say: ''Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that's obstruction of justice.''

The distinguished Senator from California, Senator FEINSTEIN, who also serves on the Judiciary Committee, likewise said in 1999, ''A nominee is entitled to a vote. Vote them up; vote them down.'' She continued, ''It is our job to confirm these judges. If we don't like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don't pass muster, vote no.''

My other colleague from California, Senator BOXER, said in 1997, ''It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.''

My colleague from Delaware, Senator BIDEN, also said in 1997, ''I . . . respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.''

The qualifications of Miguel Estrada are well known to the Senate. However I would like to briefly remind my colleagues of his outstanding record of accomplishment. Miguel Estrada represents an American success story. Born in Honduras, he immigrated to the United States as a teenager to join his mother. Overcoming a language barrier and speech impediment, he graduated magna cum laude and Phi Beta Kappa in 1983 from Columbia College. At Harvard Law School he was an editor of the Harvard Law Review and graduated magna cum laude in 1986.

Mr. Estrada's professional career has been marked by one success after another. After graduation he clerked for Second Circuit Judge Amalya Kearse—a Carter appointee—then Supreme Court Justice Anthony Kennedy. He worked as an associate at the distinguished firm of Wachtell Lipton in New York. He then worked as a Federal prosecutor in Manhattan, rising to become deputy chief of the appellate division. In recognition of his appellate skills, he was hired by the Solicitor General's Office during the first Bush administration. He stayed with the SG's Office for most of the Clinton administration. When he left the SG's Office, he joined the D.C. office of Gibson, Dunn & Crutcher, where he has continued to excel as a partner and has risen to the top of the ranks of oral advocates nationwide, having argued fifteen cases before the Supreme Court.

The legal bar's wide regard for Mr. Estrada is reflected in his evaluation by the American Bar Association. The ABA evaluates judicial nominees based on their professional qualifications, their integrity, their professional competence, and their judicial temperament. Based on its assessment of these factors, the ABA has bestowed upon Mr. Estrada its highest rating of unanimously well qualified.

His supporters include a host of well-respected Clinton administration lawyers, including Ron Klain, former Vice President Gore's chief of staff; Robert Litt, head of the Criminal Division in the Reno Justice Department; Randolph Moss, former Assistant Attorney General; and Seth Waxman, former Solicitor General. I have, on previous occasions, placed letters of support in the record. I would refer my colleagues to previous statements regarding Mr. Estrada's qualifications and endorsements.

Yet, despite the superb record, qualifications, temperament and experience of Mr. Estrada, he continues to be blocked in his nomination. In support of their obstruction, our Democratic colleagues have repeatedly raised red-herring issues with two demands that Mr. Estrada answer their questions, and that the administration release confidential memoranda he authored at the Solicitor General's Office.

With regard to the first demand, the record is clear that Mr. Estrada spent hours during a day-long hearing answering my Democratic colleagues' questions. He answered written questions submitted after the hearing. He gave answers to questions that were substantially similar to answers given by Clinton nominees who were confirmed. Yet my Democratic colleagues still complain that he has not answered their questions. Really, their complaint is that, in answering their questions, Mr. Estrada did not say anything that gives them a reason to vote against him. Simply put, they are not interested in his answers to their questions—they are interested in defeating his nomination.

This is why every effort to make Mr. Estrada available to answer additional questions has gone virtually unacknowledged. He has been made available to answer written questions and to meet with individual senators. There has even been an offer to make Mr. Estrada available to answer questions in a second hearing. But only one Democratic Senator has met with Mr. Estrada since these offers were extended, and only one has submitted written questions since the floor debate began, to which Mr. Estrada has responded. We have met our Democratic colleagues more than halfway on this, but they insist on continuing down this path of obstructionism.

Their second demand, for the Solicitor General memoranda, has been fully debated. The short response is that never before has a Presidential administration released confidential appeal, certiorari, and amicus recommendations on the scale that my Democratic colleagues seek for Mr. Estrada. This is a full-scale fishing expedition, pure and simple, and the Justice Department is right to oppose it.

Despite these supposed reasons for denying an up-or-down vote on Mr. Estrada's nomination, I think there are other factors. Last fall a Democratic staffer on the Judiciary Committee was quoted in The Nation magazine as saying, ''Estrada is 40, and if he makes it to the circuit, then he will be Bush's first Supreme Court nominee. He could be on the Supreme Court for 30 years and do a lot of damage. We have to stop him now.''

So it appears that the real reason for this filibuster is the threat of a Justice Estrada on the Supreme Court. An editorial appearing in the Atlanta Journal-Constitution said it best: ''The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credentials to serve on the U.S. Supreme Court.''

There is an additional factor that is not based on any substantive objection to his nomination. I believe that some Senate Democrats do not want the current President, a Republican President,

to appoint the first Hispanic as United States Circuit Judge for the District of Columbia Circuit.

Let me read from an editorial published by the Dallas Morning News addressing this point. On February 17, 2003, the News wrote, ''Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his reelection campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.''

Miguel Estrada will be an excellent Federal judge. Today, once again, we have a choice either to continue to block another highly qualified nominee for partisan reasons or to allow each Senator to decide the merits of the nomination for himself or herself. I choose to vote against obstructionist tactics and permit an up-or-down vote on the nominee. I urge my colleagues to do likewise.

I ask unanimous consent the Atlanta Journal-Constitution editorial to be printed in the RECORD.

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

[From the Atlanta Journal-Constitution, May 4, 2003]

DEMOCRATS USE WRONG ROUTE TO WIN SOUTH

(By Jim Wooten)

U.S. Senator John Kerry (D-Mass.) brought his presidential aspirations to the South last week, promising in Alabama that he will make the national party competitive here once again.

Make competitive, he neglected to mention, a party that has positioned itself in opposition to the war in Iraq and anything other than token tax cuts, and as Democrats reminded the nation once again about the elevation of conservatives to the federal bench. While the White House may appeal to some as inside work with no heavy lifting, getting there through the South toting this party's agenda will be a task requiring Herculean labor.

Just this week, for example, Kerry's Democratic colleeagues—Georgia's Zell Miller excepted—began to filibuster the nomination of Texas Supreme Court Justice Priscilla Owen to the New Orleans-based 5th U.S. Circuit Court of Appeals.

Kerry and other Democrats are already filibustering the nomination of Miguel Estrada to the District of Columbia Circuit Court of Appeals—the first time simultaneous filibusters against judicial nominees have occurred in the U.S. Senate.

Both Owen and Estrada are superbly qualified in every respect. Yet on Owen, those who complain that a ''glass ceiling'' exists for women of achievement are busily constructing one to keep her in her place. And those who complain that the federal bench lacks ''diversity'' find Estrada to be too much diversity for their taste. He is considered to be a conservative, and the interest groups that drive the Democratic Party nationally fear Owen is, too, at least on their abortion litmus test.

The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credential to serve on the U.S. Supreme Court.

Kerry, then, and the legions of presidential soundalikes who campaign with him, have to come to a region where conservatism is the mainstream to explain how reducing federal taxes is bad and cheating exemplary women and minorities of the fair hearing they have earned before the U.S. Senate because they might be conservative is good.

''I can help you wage a fight down here and rebuild this party for the long,'' Kerry said in Birmingham. Republicans have carried Alabama in all but three presidential elections in the past 50 years. Jimmy Carter in 1976 was the last Democrat to carry the state. George W. Bush carried every Southern state in 2000, including Tennessee, his Democratic opponent's home state. Al Gore Jr. thought so little of his Southern prospects that he actively campaigned in just three states—Tennessee, Florida and West Virginia.

Some Democrats, said Kerry, were ''surprised'' that he visited Alabama.

No surprise that he visited. The real surprise is the party baggage he hauled.

Opposition to tax cuts is comprehensible. Politicians loathe interruption in the flow of spendable revenues. Opposition to the war is, too. Too confrontational. Angers adversaries. Provokes understandable aggression, for which we bear unexpurgated sin.

While some positions are understandable, not so their party-line opposition to Owen and Estrada. Owen, the new filibusteree, drew the American Bar Association's highest rating. She is a cum laude graduate of the Baylor University Law School who scored the top grade in Texas on the bar exam. She practiced 17 years before becoming a judge and has been widely praised for her integrity and ability. Liberal groups say, unconvincingly except when they are talking to each other and Senate Democrats, that she is anti-abortion and pro-business.

Being a neighborly people, Southerners of course welcome Kerry to visit the region and to indulge himself in its hospitality. But the senator should not indulge himself into believing that a party that opposes tax cuts and filibusters nominees such as Owen and Estrada has the slightest chance of carrying this region.

[From the Dallas Morning News, Feb. 17, 2003]

RUSH TO JUDGMENT: ESTRADA NOMINATION HAS BEEN BLOCKED TOO LONG

There is a time for talking and a time for voting. The time is past for the U.S. Senate to talk about Miguel Estrada's nomination to the federal Court of Appeals for the District of Columbia circuit. It's time to vote.

Having emigrated from Honduras as a teenager unable to speak much English, Mr. Estrada went on to graduate magna cum laude from Columbia University and Harvard Law School, to clerk for a Supreme Court justice, to serve two administrations in the U.S. solicitor general's office, to win more than a dozen cases in the Supreme Court. In short, the 42-year-old lawyer is talented. Who knew that talent would extend to tying the Senate in knots for days on end.

Democrats by now are in full filibuster. Senate proceedings, as carried on C-Span, resemble the firm Groundhog Day, where the main character has to relive the same day over and over again. Every day, it's the same thing. Democrats get up, march over to the podium, shuffle papers and recite their main complaint with Mr. Estrada—that he's conservative, unconventional and unapologetic. That when he had the chance to hand them the rope with which to hang him during his hearing before the Senate Judiciary Committee, he refused to hold up his end.

Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology—which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his re-election campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.

And so they have talked and talked, in hopes that Republicans will back down. They won't. Nor should they.

Republicans certainly stalled their share of appointments during the Clinton administration. But Democrats are being shortsighted in seeking retaliation. It is precisely these sorts of narrowly motivated temper tantrums—from both sides of the political aisle—that turn off voters and make cynics of the American people. When that happens, it doesn't matter which nominees get confirmed or rejected. Everybody loses.

The PRESIDING OFFICER. The distinguished majority leader.

Mr. FRIST. All time has expired?

The PRESIDING OFFICER. That is correct.

Mr. FRIST. I will use a couple minutes prior to the vote in response to some of the comments that have been made, specifically in response to the Democratic leader's comments which I understand really are two.

Are we committed to addressing energy issues and completing this bill? We are. We will continue to work aggressively on this bill starting earlier than we normally would and continuing later tonight. Again, I ask for amendments to come forward. We are going to address them one by one in a systematic way with adequate time for debate and amendment.

Second, the question has been raised as to why we are considering these votes today, such as cloture on Miguel Estrada. The answer is, the American people deserve it. They understand we are not fulfilling our responsibility in this body without an up-or-down vote. That is our job. That is our responsibility. It is advice and consent of the judicial nominees sent by the President of the United States. That is being denied by the other side of the aisle. That is unacceptable to us. That is why that is being voted on today.

I made it very clear in my request both publicly and otherwise that we would like to stack these votes as we are voting on other energy amendments; it is not us who requested the time.

The complaint was made we were in a quorum call; why were we sitting in a quorum call in the middle of this bill? It should be made very clear that they requested that time and it was on their time that we were in a quorum call. I, once again, make this plea for a vote like today. When the initial request was made, it was that we have

the vote and not spend a lot of time discussing the issue.

Second, let me reinforce a point I made this morning; that is, we are being required by the other side of the aisle to use a lot of our valuable time, time that is increasingly valuable as we get closer and closer to the recess, to rollcall votes on district judges. That has not been done in the past. Once again, I ask and, in fact, plead with the other side to change this request they have made that we spend so much time on rollcall votes which historically have been unnecessary.

On the issues of Chile and Singapore, I have made it very clear that we will move those to a time after energy unless we are not dealing with an issue on energy. I will talk to the other side of the aisle. If there is debate on Chile and Singapore, we will probably do it after we have the final energy votes this week. Then we will take up Chile and Singapore trade issues at that point.

The same issue will come up tomorrow because we will be voting on Judge Pryor. I am sure the same issues will come up about spending time and people will come to the floor and spend time.

I make it clear, our request last night was to set aside time, some time in the future—not necessarily this week—to debate and discuss Pryor and have an up-or-down vote on Pryor. That was refused. Again, it would not have been this week—it could be sometime during September—but there was an objection to that unanimous consent request. Thus, we will proceed with a vote tomorrow.

Again, I make it clear my initial request is not to use a lot of time simply to be able to go to Pryor but that we proceed aggressively on energy. The American people deserve it. We will do it in an orderly way as we go forward today. I am confident we can complete this Energy bill if we stay focused, work together. The American people deserve it. I am confident we can do that.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin G. Hatch, Judd Gregg, Norm Coleman, John E. Sununu, John Cornyn, Larry E. Craig, Saxby Chambliss, Lisa Murkowski, Jim Talent, Olympia Snowe, Mike DeWine, Michael B. Enzi, Lindsey Graham of South Carolina, Jeff Sessions, Lincoln Chafee, Wayne Allard.

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

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

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

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

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

The yeas and nays resulted—yeas 55, nays 43, as follows:

[Rollcall Vote No. 312 Ex.]

YEAS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Lott	Thomas
Cornyn	Lugar	Voinovich
Craig	McCain	Warner
Crapo	McConnell	
DeWine	Miller	

NAYS—43

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Edwards	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Pryor
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	
Dodd	Leahy	

NOT VOTING—2

Kennedy	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ENERGY POLICY ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. Does the Senator want to offer a second-degree amendment to the electricity amendment?

Mr. FEINGOLD. Yes.

Mr. DOMENICI. I did not know that. I did not understand that.

Mr. FEINGOLD. My attempt was to set aside what I thought was a pending amendment to your amendment and then to offer a different amendment to your amendment. And I make that request again.

Madam President, I ask that in the form of a unanimous consent request, that the pending amendment to the Domenici amendment be set aside.

Mr. DOMENICI. Well, they have all been currently set aside for amendments to the electricity amendment, Madam President. That is why I wondered, what is the need for the unanimous consent request?

The PRESIDING OFFICER. There are currently pending second-degree amendments which would have to be set aside.

Mr. DOMENICI. I have no objection to the request.

Mr. REID. Will the Senator from Wisconsin yield?

Mr. FEINGOLD. I yield to the Senator from Nevada.

Mr. REID. Madam President, I direct this question through you to the distinguished manager of the bill for the majority. I have had a number of inquiries during the vote as to whether or not, when the Secretary of Defense comes here at 4 o'clock this afternoon, we are going to take a recess. We have a number of Democrats who are going to attend. I assume there will be members of the majority attending that briefing also.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, if somebody is discussing an amendment, and there is business on the floor of the Senate, we will not recess; we will work.

The PRESIDING OFFICER. Without objection, the request of the Senator from Wisconsin is granted.

Mr. FEINGOLD. Thank you, Madam President.

AMENDMENT NO. 1416 TO AMENDMENT NO. 1412

Madam President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself and Mr. BROWNBACK, proposes an amendment numbered 1416.

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

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

The amendment is as follows:

(Purpose: To protect the public and investors from abusive affiliate, associate company, and subsidiary company transactions)

Beginning on page 35, strike line 10 and all that follows through page 35, line 15, and insert the following:

SEC. 1156. AFFILIATE, ASSOCIATE COMPANY, AND SUBSIDIARY COMPANY TRANSACTIONS.

Section 204 of the Federal Power Act (16 U.S.C. 824c) is amended by adding at the end the following:

''(i) TRANSACTIONS WITH AFFILIATES AND ASSOCIATED COMPANIES.—

''(1) DEFINITIONS.—In this subsection, the terms 'affiliate', 'associate company', 'public utility', and 'subsidiary company' have the meanings given the terms in section 1151 of the Energy Policy Act of 2003.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Commission shall promulgate regulations that shall apply in the case of a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility.

''(B) CONTENTS.—At a minimum, the regulations under subparagraph (A) shall require, with respect to a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility, that—

''(i) the affiliate, associate company, or subsidiary company shall be an independent, separate, and distinct entity from the public utility;

''(ii) the affiliate, associate company, or subsidiary company shall maintain separate books, accounts, memoranda, and other records and shall prepare separate financial statements;

''(iii)(I) the public utility shall conduct the transaction in a manner that is consistent with transactions among nonaffiliated and nonassociated companies; and

''(II) shall not use its status as a monopoly franchise to confer on the affiliate, associate company, or subsidiary company any unfair competitive advantage;

''(iv) the public utility shall not declare or pay any dividend on any security of the public utility in contravention of such rules as the Commission considers appropriate to protect the financial integrity of the public utility;

''(v) the public utility shall have at least 1 independent director on its board of directors;

''(vi) the affiliate, associate company, or subsidiary company shall not acquire any loan, loan guarantee, or other indebtedness, and shall not structure its governance, in a manner that would permit creditors to have recourse against the assets of the public utility; and

''(vii) the public utility shall not—

''(I) commingle any assets or liabilities of the public utility with any assets or liabilities of the affiliate, associate company, or subsidiary company; or

''(II) pledge or encumber any assets of the public utility on behalf of the affiliate, associate company, or subsidiary company;

''(viii)(I) the public utility shall not cross-subsidize or shift costs from the affiliate, associate company, or subsidiary company to the public utility; and

''(II) the public utility shall disclose and fully value, at the market value or other value specified by the Commission, any assets or services by the public utility that, directly or indirectly, are transferred to, or otherwise provided for the benefit of, the affiliate, associate company, or subsidiary company, in a manner that is consistent with transfers among nonaffiliated and nonassociated companies; and

''(ix) electricity and natural gas consumers and investors shall be protected against the financial risks of public utility diversification and transactions with and among affiliates and associate companies.

''(3) NO PREEMPTION.—This subsection does not preclude or deny the right of any State or political subdivision of a State to adopt and enforce standards for the corporate and financial separation of public utilities that are more stringent that those provided under the regulations under paragraph (2).

''(4) PROHIBITION.—It shall be unlawful for a public utility to enter into or take any step in the performance of any transaction with any affiliate, associate company, or subsidiary company in violation of the regulations under paragraph (2).''.

Mr. FEINGOLD. Madam President, I rise today to offer an amendment on behalf of myself and the Senator from Kansas, Mr. BROWNBACK. I am pleased that the Senator from Kansas is joining me in this effort, and he has done so because I know he shares my view that the repeal of the Public Utility Holding Company Act in the underlying bill creates a serious regulatory void and market flaw that Congress should correct.

I am so pleased this is a bipartisan effort. I believe we have broad support in this body and beyond for these amendments.

These amendments would improve on the bill by making clear the actions that the Federal Energy Regulatory Commission—or FERC—must take to ensure that deregulated holding companies do not outcompete our small businesses, damage their financial standing, and then pass the costs of bad investments to consumers.

Our amendment is supported by a wide and impressive coalition of business, labor, financial, and consumer groups which include: the Independent Electrical Contractors, Air Conditioning Contractors of America, Plumbing-Heating-Cooling Contractors, Associated Builders and Contractors, National Electrical Contractors Association, Mechanical Contractors, Sheet Metal Air Conditioning Contractors, the International Brotherhood of Electrical Workers, the National Alliance for Fair Competition, the Small Business Legislative Council, Consumers for Fair Competition, and the Association of Financial Guaranty Insurors.

The Senator from Kansas and I are concerned because electricity is not like other commodities. Electricity is essential to public well-being. When this bill is enacted and the Public Utility Holding Company Act is repealed, a strong incentive will exist for large utilities with the financial resources and the potential to exercise market power to get larger. Already, the electric utility industry is undergoing rapid consolidation. In the past 3 years alone, there have been more than 30 major utility mergers and acquisitions, creating large multistate holding companies, including several in my own home State and with utilities in Minnesota that serve Wisconsin. Many companies have seen their stock plunge and credit ratings downgraded, and these companies are now prime buy-out targets.

I acknowledge that deregulation is not inherently bad and should not always be prevented. It can produce efficiencies, economies of scale and cost savings for electrical consumers. However, it can also reduce competition, increase costs, and frustrate effective regulator oversight. This amendment protects consumers from assuming the costs and risks of utility diversification into non-utility businesses, prevents utilities from subsidizing affiliate ventures and competing unfairly with independent businesses, and protects utility investors. It does so by requiring FERC to issue regulations that require affiliate, associate, and subsidiary companies to be independent, separate, and distinct entities from public utilities; maintain separate books and records; structure their governance in a manner that would prevent creditors from having recourse against the assets of public utilities; and prohibit cross-subsidizing, or shifting costs from affiliate, associate, or subsidiary companies to the public utilities.

The Public Utility Holding Company Act was enacted in 1935 to rein in the pervasive economic and political sway that holding companies held over the Nation's public utilities at that time. Studies conducted by the Federal Trade Commission and the U.S. House of Representatives at the time demonstrated that the holding companies, which controlled approximately 80 percent of the Nation's gas and electric utilities, were exploiting both consumers and investors. At the time PUHCA was passed, 16 major holding companies and their utility subsidiaries produced more than three-quarters of the electric energy in this country.

Individual States and localities enacted their own laws, but were unable to control these multi-State holding companies—many of which also held investments in foreign countries—and their utility subsidiaries. Holding companies created organizational structures that extended across State lines, specifically to place the holding companies beyond the regulatory reach of the individual State commissions. In fact, registered holding companies were formed specifically for the purpose of avoiding regulation. Holding companies leveraged their utility assets to gain financing for risky investment ventures and engaged in anticompetitive behavior.

PUHCA requires that proposed investments benefit the utility system, and not harm ratepayers, shareholders or the public interest.

PUHCA requires that holding companies seeking to acquire utilities obtain preapproval from the Securities and Exchange Commission. In addition, a particular class of holding companies, known as ''registered holding companies,'' those holding companies with utility subsidiaries in more than one State, must obtain SEC approval also for acquisitions of nonutility businesses. The SEC has authority to oversee and provide advance approval for the complicated financial transactions of the registered holding companies,

including intrasystem transactions and diversification into unregulated businesses.

PUHCA does these things, but the bill before us repeals PUHCA. As a result, registered holding companies will be able to freely diversity into unregulated businesses, and to engage in interaffiliate transactions in which the holding company and nonutility businesses drain financial resources and key assets from the utility businesses.

In California, for example, holding company maneuvers have left California utilities in a weakened financial condition. Billions of dollars have been moved out of their utility companies into the holding company and then into their unregulated affiliates which are protected by laws that now put this cash beyond the reach of even the holding company. As a result, the utilities have had too little cash to carry out their utility obligations.

In addition, even with PUHCA, we are already experiencing concerns about utilities expanding into electricity-related services and outcompeting small businesses in my State. Small contractors can't compete against big utilities in areas like energy efficiency upgrades to private homes, when big utilities can use existing assets like personnel, equipment, and vehicles to perform those services. When PUCHA is repealed, utilities will be able to expand into other business areas, and we should make certain that we protect small businesses.

This amendment is good public policy, and it will strengthen the Senate's position in Conference with the House of Representatives. I urge my colleagues concerned about ensuring fairness in a deregulated system to support this amendment.

Let me say how delighted I am to be working with the Senator from Kansas who I know has a deep and abiding commitment to small businesses as well.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I thank my colleague from Wisconsin for offering this amendment. I join him on it.

The amendment my colleague from Wisconsin has described first came to my attention by a constituent and a friend of mine, D.L. Smith, Topeka, KS. D.L. is a great K-Stater, loves his country, has a medium size contracting business. He employs between 57 and 100 Kansans. Founded in 1972, the DL Smith companies provide commercial, institutional, and industrial electrical services and, in recent years, even a little bit of telecommunications. They have been expanding slightly. D.L.'s service trucks can be seen as far west as Salina and as far south as Pittsburg, KS.

DL's is a successful medium size business by Kansas standards. It might grow and could become more successful. But it might not be able to grow and could falter. The success or failure of this business will in great part be dependent upon the dispensation of this amendment.

This is what he brought to my attention. D.L. said: Look, what is taking place is we are having to compete with these large utility companies that he asserts are using their regulated business to subsidize the unregulated business and drive the small contractors out of business. That is my 15-minute speech, what he said and the examples he gave.

What he does now is help in the contracting of electrical services into homes. He is having to compete now with very large utility companies that are looking at other areas they can expand into to be able to do contracting work and, in the process, are driving these small to mid-size businesses out of business.

Such diversification on the part of the utility companies has been the cause of significant and continuing harm to many small private sector firms. Utility-owned subsidies and affiliates now operate in almost every imaginable type of business, from auto salvaging to resort management to real estate brokerage to, more frequently, electric and mechanical contracting. Utilities now routinely sell appliances, provide plumbing, heating and cooling, and service contracts, engage in insulation work, sell and install storm windows and doors, provide outdoor lighting and interior lighting fixtures.

Normally as a free market Republican, I wouldn't have much problem with that. This is a free country. People can compete the way they want to, the way they choose. The problem with this is, you have a regulated utility that has a clear income source that is dependent upon ratepayers that is set by the Government, and they have a flow of resources that is established by the public sector. And it is a rate of return based upon cost plus.

The challenge—and what the D.L. Smiths of the world are feeling—is the subsidization of that regulated business going into the unregulated field and driving small to mid-size contractors out of business. Too many companies are doing a very natural thing—trying to grow, get a little more business here and there for their shareholders to try to be able to hold down the cost of electrical rates to their customers. That is understandable. The problem is, you are using that regulated utility where they don't have competition coming in there to compete against an unregulated field and, in many cases, driving out small to mid-size contractors like the D.L. Smiths of Topeka, KS, and others.

Private sector businesses both small and large welcome competition. Unfortunately, there have been numerous instances where utilities have engaged, in some cases, in unfair and abusive competitive behavior which undermines true competition in these impacted markets.

The primary obstacle to free, fair, and open competition in these markets is the ability of a utility to provide its affiliates and subsidiaries with artificially lower costs of operation through cross-subsidization and the failure to properly recover the true costs of equipment and services provided by the utility to such unregulated operations. These advantages arise neither from size, nor efficiency, but rather from the corporate relationship such operations have with its related utility.

The utility companies are doing, by and large, a great job in serving the public, providing utility rates at as low a cost as possible. That is a good thing. They work conscientiously to do that. We have a number of very good utility companies in the State of Kansas. When they use the cross-subsidization, which is what we are trying to prevent in this bill, to run out small and midsize businesses, that is when we have a problem, particularly when denying access to newly emerging markets, a key to future expansion, job growth, and profitability for this country.

For those reasons, I support this amendment. I also recognize my colleagues who wrote the bill, the Senators from New Mexico, particularly Senator DOMENICI. They are trying to address this issue. We put forward an amendment that we hope will strengthen the bill, help it out, one that doesn't negatively impact the electrical utility businesses, other than to say here is the area in which you can operate. Outside of that, this should be left to other businesses, particularly small and midsize ones, to allow them to grow.

The amendment we put forward has broad support from the contracting community, electrical contractors, plumbing, heating, and mechanical contractors because they are feeling this onslaught. Most of my colleagues, I guess, have been contacted by the contractors, most of which are small to midsize businesses operating in communities throughout the country, that want this Feingold-Brownback amendment to be added to the Energy Policy Act of 2003.

I recognize the work that the chairman and ranking member have put on this particular topic. We hope this amendment can be accepted because we think it strengthens the bill.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Madam President, I thank the Senator from Kansas for his excellent work. It is an excellent example of why this is so important. I appreciate his support in working with me on it.

I ask unanimous consent that the Senator from Oregon, Mr. WYDEN, be added as a cosponsor of the amendment.

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

Mr. FEINGOLD. Madam President, I ask unanimous consent that a list of organizations in support of the amendment be printed in the RECORD at this time.

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

SUPPORT FOR FEINGOLD-BROWNBACK AMENDMENT ON AFFILIATE TRANSACTIONS

The following organizations support this amendment:

American Association of Retired People.

AFGI: Association of Financial Guaranty Insurors; ACE Guaranty Corp.; Ambac Assurance Corp.; CDC IXIS Financial Guaranty North America, Inc.; Financial Guaranty Insurance Company; Financial Security Assurance; MBIA Insurance Corp.; Radian Reinsurance Inc.; RAM Reinsurance Company; XL Capital Assurance.

American Iron and Steel Institute.

Consumers for Fair Competition.

Consumers Union.

Electricity Consumers Resource Council (ELCON): A.E. Staley Manufacturing Company; Air Liquide; Alcan Aluminum Corporation; Anheuser-Busch Companies, Inc.; BOC Gases; BP; Central Soya Company, Inc.; Chevron Texaco; Delphi Automotive Systems; Eastman Chemical Company; E.I. du Pont de Nemours & Co.; ExxonMobil; FMC Corporation; Ford Motor Company; General Motors Corporation; Honda; Intel Corporation; International Paper; Lafarge; MG Industries; Monsanto Company; Occidental Chemical Corporation; Praxair, Inc.; Rockwell Automation; Shell Oil Products; Smurfit-Stone Container Corporation; Solutia Inc.; Weyerhaeuser.

IBEW.

MBIA Insurance Corporation.

Municipal Electric Utilities of Wisconsin.

National Alliance for Fair Competition, which includes: Independent Electrical Contractors; Mechanical Contractors Association of America; National Electrical Contractors Association; Plumbing-Heating-Cooling Contractors-National Association; Sheet Metal and Air Conditioning Contractors' National Association; Air Conditioning Contractors of America; Associated Builders and Contractors.

National Association of State Consumer Advocates.

Public Citizen.

Small Business Legislative Council (90 small business trade associations).

U.S. Public Interest Research Group.

Wisconsin Public Power, Inc.

Sierra Club.

Mr. FEINGOLD. Madam President, I am pleased that the ranking member of the committee, Senator BINGAMAN, is indicating positive remarks about this amendment as well. I wonder if he may wish to make some remarks in support at this time.

Mr. BINGAMAN. Yes. Madam President, first, I ask unanimous consent that I be added as a cosponsor, if I am not already one, on the amendment.

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

Mr. BINGAMAN. Madam President, I compliment the Senator from Wisconsin and the Senator from Kansas for proposing this amendment. In my view, it is offered in the same spirit in which the earlier amendment I offered related to mergers was offered, and also the amendment by Senator CANTWELL related to market manipulation.

I think all three of those amendments have somewhat the same purpose, which is to strengthen this bill, to ensure there are necessary protections for consumers, ratepayers, and for others who, in the case of the Senator from Kansas, pointed out there are many contractors in the private sector who feel an amendment such as this is essential if they are going to be able to compete and not face some type of unfair competition from companies that are part of holding companies that are owned by utilities or that also own utilities.

Let me back up here and talk a little about the Public Holding Utility Company Act, because that is the basic issue that causes this amendment to come to the floor. As part of this bill, the proposal is that we repeal the Public Utility Holding Company Act. That was in the bill passed in the previous Congress—the repeal of that. I have supported that but I have only supported it if it were clear that we were replacing those authorities and those responsibilities for regulation and oversight at the Federal level with other effective authorities for oversight and regulation.

My conclusion is that the Domenici substitute, as it now stands, does not put in place effective regulatory tools to ensure that at the Federal level we can prevent the abuses that caused the Public Utility Holding Company Act to come into existence in the first place.

There is a very useful article that I commend to all of the Senate in today's business section of the Washington Post, written by Peter Behr. It is called ''Energy Monoliths Could Return; Law Limiting Companies' Reach Faces Repeal.''

Well, the law that limits a company's reach that this article is talking about is the Public Utility Holding Company Act. As I say, there is general agreement that the act has become an anachronism; it is way too complex; that we need to modernize the Federal regulatory scheme in regard to utilities. So the Public Utility Holding Company Act should be repealed but it needs to be replaced with something that also constitutes effective regulation. Let me refer to the chart. I don't know if anybody can see it.

This tries to rapidly describe what is involved with the Public Utility Holding Company Act, or PUHCA, jurisdiction. It basically says that for a company which owns, as the chart shows, other affiliates—a utility generating and marketing affiliate—there are real restrictions on what that holding company can do with regard to any other acquisitions of utilities. Essentially, you can acquire one more utility, or you can own one utility, and then if you own any more than that, you come under a very strict set of requirements that are presently in the Public Utility Holding Company Act. Those requirements should be repealed but we need something that is effective.

This amendment tries to do that and would do it in an effective way. It accomplishes the same goal that I was trying to accomplish as part of—or one of the two goals I was trying to accomplish in the merger amendment I offered earlier yesterday, by requiring FERC to establish real firewalls around the utility affiliate of a holding company to prevent the assets of the utility from being used to prop up risky diversification ventures. That is, you cannot use the assets of the utility to support a contracting company, as an example, which is the kind of thing that the Senator from Kansas was talking about having to compete with.

I think the language of the amendment is extremely clear. It makes it very clear that the Federal Energy Regulatory Commission shall promulgate regulations, shall apply in the case of a transaction between a public utility and an affiliate or associate company of the public utility—and that is what the chart shows—where you have a utility and another affiliate. It basically builds a firewall and gets at the issue I was talking about when I offered my amendment yesterday evening; that is, the public utility shall not cross-subsidize or shift costs from the affiliate or associate company to the public utility. It cannot encumber the assets of the public utility in order to prop up some other business. That is only fair as far as the ability of the other business to compete in the marketplace, but it is particularly important as security for the ratepayers of that public utility.

There are an enormous number of examples. I went through several of them yesterday. Let me refresh people's memories. There are many examples in the last year—in recent months, in fact—where utilities have been getting into other activities and have encumbered the assets of the utility, and the ratepayers of the utility have been adversely affected.

One example I mentioned yesterday, and I will mention it again because it does relate to Kansas, is West Star. It is the largest utility in the State of Kansas. It is owned by a holding company. West Star came under scrutiny last year because of problems that it encountered with nonutility affiliates.

West Star had invested in a number of unregulated ventures, including a home security company, and the home security company did not do well. So the holding company, which owned both the utility and the security company, shifted $1.6 billion of debt from its unregulated companies to the utility. It loaded these debts onto the utility, and then you have essentially the ratepayers of that utility left having to pay $100 million per year because of the activities of unregulated affiliates that had nothing to do with the utility itself.

Some would say this is something the States should handle. The Kansas Corporation Commission began an investigation this last summer into this situation. The Justice Department began an investigation. The Federal investigation resulted in the indictment of the CEO of the company for bank fraud, and the investigation of the Kansas Corporation Commission, which

is the State regulatory agency, resulted in a dramatic restructuring of the company to separate the utility from the unregulated companies of the holding company.

Some would say: They solved it at the State level. Why should we be having any authority at the Federal level? They solved it at the State level for the period going forward, but they did not solve it prior to this arrangement being put in place and, accordingly, the ratepayers are paying $100 million a year to repay the debt that the utility has acquired because of this activity.

One other example I mentioned yesterday that I will mention again is Portland General Electric. Portland General Electric was in the unfortunate position of having been acquired by Enron, and the Oregon Public Utility Commission required that a number of conditions be met before it approved that acquisition. That was helpful.

Frankly, they acted wisely in requiring those conditions. But even that was not adequate to fully insulate that utility from the collapse of Enron and from the collapse of the other many businesses in which Enron was engaged. The fate of the parent company has had a very adverse effect on the ability of Portland General to gain access to capital markets. As I say, that is just one of many other examples that can be cited.

This amendment Senator FEINGOLD and Senator BROWNBACK are offering is extremely meritorious. It is an essential part of what we ought to be doing if we are going to avoid getting back into a situation where cross-subsidy is permitted. We ought to have a bright line requirement that the Federal Energy Regulatory Commission ensure that cross-subsidy will not occur in these acquisitions and mergers. We owe that to ratepayers. We owe it to the public generally.

I hope very much we will adopt this amendment. I commend the authors of the amendment for their proposal today.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, before I start, I ask the distinguished sponsor of the amendment how much additional time does he think he needs on his amendment. I am not pressing the Senator.

Mr. FEINGOLD. Madam President, I do not expect a great deal of time at all. I would like the opportunity to respond to any comments the chairman of the committee might make.

Mr. DOMENICI. Since it looks as if we will not be very long, does the Senator from New Mexico know if there is another amendment ready on his side since we are close to completing the debate on this amendment?

Mr. BINGAMAN. Madam President, let me check with the Democratic floor leader. I will get an answer back on that question.

Mr. DOMENICI. I thank the Senator very much.

Madam President, I say to the author of the legislation, I very much appreciate the fact that during these difficult times when we are trying very hard to get so much done in a short period of time the Senator came to the floor, put an amendment down, and, in his typical manner, got to the point, and in short order is going to let the Senate vote.

Frankly, what he is asking us to do is exactly the wrong thing for the situation that exists today in the energy markets. There is an article that was quoted from which is on all our desks:

Energy Monoliths Could Return.

It was quoted from, excepting on the second page there is an absolutely succinct paragraph that this Senator believes is totally, unequivocally correct. I quote three-quarters of the way down the paragraph starting with the word ''repeal'':

Repeal could restore confidence in energy companies shunned by shareholders after the Enron scandal and encourage badly needed expansion of power transmission networks.

From the financial market standpoint, repeal—

And let me add ''of PUHCA,'' repeal of PUHCA—

would be the single most important part of the energy bill. It certainly is what investors are looking for.

The problem with the amendment is that it probably will take the intent in that paragraph, the indication of what most probably will happen when PUHCA is repealed, and it will probably destroy it, wilt it, make it very vulnerable, and we will not get the result. The result is the need for huge injections of capital into the energy companies because of what has happened to them in the past 18 months.

That is why it is good news that PUHCA is being repealed. That is why it is bad news when an amendment comes along and says: This is just a little 'ole amendment to make sure the electric companies keep their money where it ought to be, that they ought not invest it anyplace else, and that their boards of directors be governed by this statute, the kinds of issues that tie up the potential of a company that is involved in the utility business.

We have already given FERC in this carefully balanced bill the enforcement power to make sure that the companies are properly invested, to make sure they are taking care of their business and of the stockholders' money and of the electrical business.

We have actually said that is a power FERC has. This title already includes enhanced books and records authority for both State and Federal regulators to ensure that ratemaking bodies have all the information necessary they need for retail ratemaking, to ensure there is no cross-subsidization or improper commingling of utility and affiliate assets. That is what the authors of the amendment are worried about, that if PUHCA is not there—and remember, everybody has said so far, including my friend Senator BINGAMAN, we ought to get rid of PUHCA. It is an unfair holding down of these companies by an old law. Everyone wants to get rid of it except these two Senators want to say now if we do, let's go back and put some more handcuffs on these companies because we are scared, we are frightened, that they will do wrong.

We are saying, if that is done, the very pluses, the positives, that come from the repeal are going to be negated because what is being done is not needed, and investment is going to be scared off.

The Domenici underlying bill says that when we get rid of PUHCA we better put in something, although this job is principally the job of States. When Senator BINGAMAN read about the two cases, in both cases State commissions were involved in cleaning up the matter, but nonetheless, we have put in here the Federal Government, FERC, is given this authority in this particular area, because of PUHCA going away, to make sure there is no improper commingling of utility and affiliate assets.

There is more. In fact, the underlying amendment also says, with reference to merger, acquisitions and dispositions, leasing, or other transactions:

Will not impair the ability of the Commission or the ability of the State commission having jurisdiction . . . to protect the interests of consumers or the public.

And:

Will not impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction.

So it even says when PUHCA is gone, we have all of these entities that will be worried about mergers and the like, but we put new language in that I just read, which says, nonetheless, if we are talking about merger, acquisition, or disposition, there are these additional powers.

Frankly, I understand that an amendment which is, in fact, a bill—that is the Domenici amendment—it is that big. I understand Senators and their staff could read it and they could say, well, yes, we get rid of PUHCA, and then somebody back home might tell them if you are getting rid of PUHCA you better be sure you do so and so, and this amendment could be given birth.

If one looks at this carefully, they will find it did not come to the floor without the staff which worked on it helping the Senator make sure we know, when we get rid of PUHCA, we have to do something to be sure we have taken care of some problem children that might arise along the way.

I want to repeat, this is not a little proposition. If it was, I would accept it because these are very good Senators. But I know if I took it, I would be sending the wrong signal to all of those companies across this land that have reviewed this bill very closely, some small, some large, some of them municipal, some of them co-ops. They have looked at it carefully and they know we are through with PUHCA. I do

not want them to say, well, we got rid of one and they turn right around and make it difficult for us to do what we ought to do, what we can do, what we should do, to make sure we got all the assets invested in our companies in these faltering days in terms of resources.

So I say to the two Senators, I wish that were not the case so I could thank them and accept it, but I honestly do not believe those who analyzed it did a careful job. No aspersions.

A better way might be that we looked at it carefully, we watched out, and we were certain we protected the public and the consumers, those who will take electricity, and indeed the stockholders, so the kinds of things they are worried about will not happen.

I do not know what it means, but the horror cases they are speaking of occurred while PUHCA existed. That is interesting, just as an observation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. First, I thank the Senator for the kind remarks. I do not believe we disagree with the goals with regard to the underlying amendment. In fact, I regard this, and I think Senator BROWNBACK regards this, as a friendly amendment; that is, an attempt to make sure this dramatic change, the repeal of PUHCA, gets off the ground properly and does not, in effect, throw out the baby with the bathwater.

My amendment does not attempt to repeal the repeal. I think if one was listening to the remarks of the Senator from New Mexico they might have gotten the impression we were sort of pretending we were repealing PUHCA and then putting it back in effect. That is not in any way, shape, or form what we are trying to do.

We are trying to address a very specific problem the Senator from Kansas laid out very well, the cross-subsidization problem, when a utility holding company owns other affiliated entities and the problems that occur when those assets are moving back and forth in a way I and many people think threatens ratepayers as well as investors.

Specifically, the Senator from New Mexico talks about the fact that there are those who are poised and ready to invest in the utility industry if changes are made, presumably such as the repeal of PUHCA. It is my belief that is exactly what our amendment helps do. I think it helps create a scenario that will make investors more positive rather than less positive.

The Senator's argument about somehow our amendment will scare off investors is really a 5-year-old argument. PUHCA repeal, without the bottom-up regulation these ring-fencing provisions of this amendment provide, will continue to keep capital away. We do not have some kind of insurance for investors in utilities that the resources of those utilities will not be spirited away to these affiliates. Then they will not have the confidence in investing, and I want that investment to happen.

Regulatory insulation, and that is what the Feingold-Brownback amendment does, will help restore investor confidence. It will actually help achieve the chairman's goal. Our belief, and our hope, is our amendment will help bring order to what is a beleaguered sector, not that it will wreak havoc.

Utilities provide an essential public service. Our amendment insulates these utilities wherever they are in a corporate family. So what we are doing is providing a clear distinction of what entities are regulated or not.

Now, if we are looking at investments, that is what we want to see. We want to know exactly what we are getting into. We want to know what our dollars are going to be used for and it helps restore investor confidence and consumer confidence, not the reverse.

This is a good amendment. It has strong bipartisan support. There have not been a lot of Feingold-Brownback amendments over the years, even though I thoroughly enjoy working with the Senator. I think what it represents is a powerful commitment on the part of those of us who are working on this to protect small businesses in our State.

I will not read again the list of the contractors and small business organizations that support this effort, but it is the kind of mainstream people that made my State. It is the kind of mainstream people that made the Chair's State. It is the kind of mainstream people that made the Senator from Kansas's State. They do not want to be driven out of business by utilities able to somehow move these assets back and forth through affiliates that are not properly regulated. That is a reasonable request.

Even more importantly and in response to the Senator from New Mexico, we are trying to make sure investors feel comfortable so it will help the utility industry. The worst thing we can do is raise the specter of another Enron. The phrase ''cooking the books'' dominated our headlines a year ago, and our amendment is about making sure there will not be any accusations or reality of cooking the books when it comes to a utility and its affiliates, that they will have two separate sets of books.

Yes, the Senator's underlying amendment is good. It allows FERC to look at the books. If they look at the books and there are no standards or rules about keeping the entities separate, what is the good? There need to be some teeth in it. That is what our amendment does.

I suggest this is a reasonable, fairly modest amendment that will make the Domenici substitute even better. I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I will speak briefly to the Feingold-Brownback amendment.

There is the illusion, or at least the concern, on the part of some of our colleagues that the title we have before the Senate in S. 14 somehow creates a type of regulatory gap that I don't believe exists. The chairman of the committee, in his thoughtful processes that brought us to this amendment and the time he has spent working on it with staff, would agree it does not exist.

Certainly Senator FEINGOLD and others have reason to be concerned, as do I. My constituency, my ratepayers of Idaho, for a period of time spent a good deal more than they should have on their electrical costs because of the dysfunctional markets in the State of California. Those dysfunctional markets occurred with all of these laws in place that we are talking about now changing. What is most important to recognize is, those who misused the market are now suffering. Those who misused the market are now being prosecuted. Those who misused the market to line their pockets, I trust, are having their pockets stripped of ill-gotten gold.

Why? Because our President has a Corporate Fraud Task Force, we have a little organization called the FBI, we have the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and, yes, even the U.S. Postal Service and the U.S. Attorney's Office that seek to look at and have found what they allegedly suggest is postal fraud.

Whether it is Enron, whether it is Dynegy, whether it is Reliant or whether it is El Paso Corporation, time and time again, and currently, many of the major operatives within those organizational structures are being brought before the Federal justice system and will be or are being prosecuted because of what they are now alleged to have done or are accused of having done as it relates to wire fraud, conspiracy, manipulation, round-trip trading, all of those things we suggest ought not happen.

What we have done in this title appropriately protects the consumers of this country, but, as important, we protect the capital that comes to this market to be invested, to create the generational capabilities, the transmission capabilities, the pipeline capabilities, all the things we need to interlock an energy system in our country and to continue to make it as reliable as it has been in the past and as reliable and abundant as it should be, hopefully at the least cost to the consumer.

Clearly, the consumer got gouged. My consumers got gouged. There was ill-gotten gold. We darned well ought to strip it from the pockets of those who were out to steal it from the consumer. Tragically enough, that stealing was going on long before this

amendment, under the current laws that some argue we ought to keep in place, 1930 laws that have rendered themselves relatively obsolete in a modern-day energy system.

We are asking that we have the right enforcement in place. We have given FERC the authority it ought to have within the confines and the limitations in which we believe it ought to operate. There is no regulatory gap. Any reason to add to what we have done simply frustrates the multibillion-dollar market, the revenues that will come, the investment that will be created, toward once again creating the finest electrical and energy market in the history of the world. That is what we ought to have. That is what we need. Without that, our investors and our economies look elsewhere, beyond the bounds of our country where they can find stability of economy, stability of resource and, most importantly, an abundant supply of energy.

In the absence of energy, in the absence of an abundant, least cost supply of energy, our economy is in trouble. If our economy is in trouble, most assuredly our men and women who want to find work in that economy are oftentimes without work. We believe this is a full employment bill that will create literally hundreds of thousands of new jobs because of the stability it will bring.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I was informed a while ago by my good friend, the whip, Senator REID, that as soon as we finish this amendment—and I think we are finished; I am not quite sure whether the proponents have finished—Senator BYRD wanted to speak. I ask Senator BYRD, since he is here, if that is the case. And then I ask if I could speak following Senator BYRD, if he has no objection. I ask that after the distinguished Senator BYRD completes his remarks, the Senator from New Mexico be recognized.

Mr. REID. Reserving the right to object—and I shall not object—the Senator has that right. We are in the process of winding down debate on the Feingold amendment. After Senator BYRD and the Senator from New Mexico, the manager of the bill, we would be ready to vote on not only the Feingold amendment but the two amendments that have been offered by the Democratic manager of this bill.

I suggest, because these were debated yesterday, we should have 10 minutes equally divided prior to a vote on each of the Bingaman amendments. While Senator BYRD is speaking, maybe the staff could prepare a unanimous consent agreement to meet these steps that we need to take to complete votes on these three amendments. We would at that time be ready to offer another amendment.

Also, if Senator BYRD speaks for half an hour or 45 minutes, then we will have these votes occur at the same time as Mr. Rumsfeld is here. I don't know if that is what people want. At least half of the Senate will be going to the Rumsfeld meeting—maybe even more. It is up to the Republican leader, of course, what he wants to do with the Secretary of Defense. But whatever the wish of the leader is, we will certainly go along.

We are ready to vote on these three amendments.

Mr. DOMENICI. Madam President, if we could reduce the debate time before each amendment. We don't need 10 minutes; 5 minutes would do.

Mr. REID. I would be happy to do that, although I have conferred with Senator BINGAMAN. On one amendment he needs 5 minutes, and on the other amendment he could use 2½ minutes.

Mr. BINGAMAN. In response, I don't believe I will use 5 minutes; I will probably use closer to 3 minutes, but I would like to have the ability to go on if I get warmed up.

Mr. DOMENICI. Let's prepare the unanimous consent request on all three, with 5 minutes each, 10 minutes equally divided.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I want to bring this debate to a close, but I want to quickly respond to a couple of comments from the Senators from New Mexico and Idaho.

When the Senator from New Mexico was making his comments he talked about the fact the State commissions, public service commissions, and others would be able to sort of take care of these kinds of problems that would exist in a post-PUHCA repeal era. I don't think that is an adequate answer.

The fact is, as I mentioned in my opening remarks, in many cases these are interstate utility entities, and it is that very fact that has made it so difficult, prior to PUHCA, for there to be any appropriate regulation at all. So we do need some kind of appropriate law that homes in on this problem of utility holding companies and affiliates and the cross-subsidization problem that exists. That is the first point I want to make, that the State level is simply not going to do it.

The second point relates to the comments of the Senator from Idaho. The premise of the remarks of the Senator is that somehow my amendment undoes the repeal of PUHCA. It does not do that. Our amendment is necessary and helpful and good for investors and consumers and ratepayers and small business, whether PUHCA is repealed or not. The argument is a red herring. The argument has no relationship to the issue of whether these provisions are needed.

Maybe we could put it this way: The Senator from Idaho believes that a 1933 law known as PUHCA is no longer the right law for this time. We are proposing what we believe to be the appropriate, measured, consumer confidence and investor confidence provision for 2003, not 1935. So we are accepting in the amendment the repeal of PUHCA, but we are adding this provision that is necessary in 2003, not 1935.

The only other alternative, if we do not do at least our amendment, is we are going to be returning to the environment that we are just coming out of, the environment that everyone admits was a disaster for consumers and that it destroyed consumer confidence and investor confidence because of the recklessness and the cooking of the books that went on all over this country, particularly in the utility industry.

We have to make sure what we do here does not undercut the confidence we want to increase for consumers and for investors. That is the purpose of our amendment. We are not trying to undo the chairman's primary purpose of his amendment.

I yield the floor. Assuming that is the end of the debate, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator from New Mexico. I thank him for the knowledge he brings to the Senate on many matters. For these several years I have worked with him on the Appropriations Committee, he has shown himself to be one of the most knowledgeable persons on that committee and, with respect to energy, he has shown time and again that he is well equipped to enter into debate and to help to form good legislation, better legislation, or the best legislation.

I have always found him to be one who is easy to work with. I enjoy working with him and I compliment him for the time he has put in on this matter that is before the Senate. He arrives at his conclusions after due and deliberate examination, and he is a first-class legislator.

Mr. DOMENICI. Madam President, I say thank you very much, Senator BYRD. I greatly appreciate your remarks. It is always my pleasure to be serving with you.

Mr. BYRD. I thank the distinguished Senator. He has distinguished himself in many fields.

Mr. DOMENICI. Thank you.

Mr. BYRD. Madam President, on pleasant summer days, such as these, I doubt that the average person worries too much about the intricacies of energy policy. However, energy is the life's blood of our economy. Obviously, a comprehensive energy policy is a critical underpinning for a viable, strong nation.

And, there are real and growing concerns about the Nation's energy security—about our teetering economy and about our growing dependence on foreign oil. Coupled with these is an increasing need to protect the environment and address global climate change. But instead of looking for balanced and comprehensive solutions to our critical energy problems, this administration drags its feet and deals with our energy challenges by meeting

behind closed doors with select corporate contributors.

As is often the case, this White House offers shortsighted, silver bullet solutions. But, in fact, there are just no silver bullet solutions to a sound and comprehensive energy policy for the future. There is no Lone Ranger approach to energy. There is no John Wayne approach to energy. We have to consider the worldwide energy supply and demand. We must be ready to invest in a range of policies, technologies, resources, and institutional structures that can prepare us for the future.

During the 2000 election cycle, the Bush campaign claimed that the creation of a national energy strategy was one of its most important priorities. But what they meant by that may not be what many people thought they meant. Even as candidate Bush traveled the Presidential campaign trail, the issue of energy often shared the stage with George W. Bush and DICK CHENEY, in part because both candidates were formerly business executives with ties to the energy industry. My own home State of West Virginia, where energy issues are very important, played a critical role in pushing the Bush-Cheney team over the top in the electoral college and handing the current administration the White House.

But, after his election, the President seemed more interested in seeking the advice of his corporate friends than developing a balanced, comprehensive, far-reaching energy policy. It may be illustrative here to review the background of some Bush administration officials. Vice President CHENEY served as the CEO of Halliburton. Secretary Norton has lobbied for the oil, gas, and auto industries. The President's Chief of Staff has served as the president and CEO of the American Automobile Manufacturers Association. The U.S. Trade Representative, Robert Zoellick, has served on Enron's Advisory Council. Even National Security Adviser, Condoleezza Rice, was honored by Chevron with a supertanker named after her. With such close connections to big corporate donors, one has to wonder about who really influences the energy agenda of this administration.

Upon taking office, the Vice President led a task force that hammered out the new administration's energy strategy for the Nation. After months of work, the National Energy Policy Development Group issued its report in May 2001. It was praised in some camps, criticized in others. The criticism arose because executives from Enron and other big corporate contributors played a major role in the recommendations of that task force. To many, the task force recommendations for a national energy policy appeared to be little more than an industry wish list.

When the General Accounting Office and outside groups requested basic information about the Vice President's task force, the White House claimed executive privilege. Throughout the court battle which ensued, the Bush Administration repeatedly claimed that the separation of powers and executive privilege prevented them from releasing pertinent documents. As a result, the credibility of the White House energy strategy development is certainly strained, to say the least, especially with regard to the oil industry.

I have been particularly concerned about our continued reliance on foreign oil and our lack of commitment to developing domestic fuel diversity. Tackling that growing problem requires a serious and multi-faceted commitment, involving cooperation and coordination among many players. But what the President seems to be proposing can be pretty much boiled down to drilling for oil in the Arctic National Wildlife Refuge, and exploiting the oil reserves under the hot sands near the Tigris and Euphrates Rivers, in the Fertile Crescent—modern day Iraq.

U.S. domestic oil production peaked in the early 1970's, and, since that time, our oil demands have far outstripped our supplies. But instead of figuring out how to disentangle ourselves from foreign oil dependence, the Bush administration seems to be intent on sinking our energy fortunes deeper and deeper into the hot sands of old Mesopotania—the hot sands of the Middle East. What is this administration's total energy agenda? Is oil the only card in the energy deck which the administration will play?

It certainly appears so. And one has to wonder just how that card is being played. As the world witnessed in the war in Iraq, the administration was much more interested in protecting, defending, and developing Iraq's oil resources than it was in protecting Iraq's cultural or social resources. Early on in the war, coalition forces were ordered to make it a priority to protect the oil fields. Upon their entry into Baghdad U.S. troops were ordered to surround and protect Iraq's oil ministry. Despite clear warnings, coalition forces left Iraq's priceless museums and other government institutions defenseless. On top of that, U.S. forces failed to protect nuclear test facilities. This is especially puzzling in light of the administration's often stated concerns about dirty bombs and the pilfering of nuclear material by terrorists. So where are our priorities? What is the United States really up to in Iraq?

If the United States were really intent on developing a smart, commonsense oil policy, we would be taking additional measures to better balance our supplies from other nations; we would be carefully using our strategic reserves to hedge against future foreign manipulation; we would be promoting industrial energy efficiency, and we would be nurturing all forms of alternative sources for our energy and transportation needs, including coal, renewable, and biomass-based sources.

I have proposed my own commonsense proposal to help mitigate the growing global dependence on oil supplies from volatile regions. The United States encourage the transfer of our own clean energy technologies to other nations, especially developing countries who will increasingly be buying into the same finite oil markets that we are purchasing from. Such efforts are critical in order to satisfy our energy security needs as well as to address related economic, job creation, trade, and environmental objectives. The demand for oil from other countries will be increasingly fierce, and we have only a narrow window of opportunity ahead. Last year, the administration, at my urging, released a plan for just such an initiative intended to help open international markets and export U.S. clean energy technologies. However, little, if anything, has been done to implement it. Where have we seen this strategy before? The answer is, we have seen it virtually everywhere with this administration—from homeland security to No Child Left Behind.

Furthermore, the administration's Fiscal Year 2004 budget confirms some of my worst fears. When it comes to domestic issues, the plan of administration officials these days is about outsourcing, downsizing, reorganizing, reducing, cutting, slashing, slicing, dicing, and carving up the Federal Government. It is a tailor-made infomercial for the benefit of all-too-receptive corporate donors.

The administration's energy budget is a sham, and its energy program requests are no different. The Department of Energy cut $20 million for the Clean Coal Power Initiative. The Department of Energy's oil and gas research program was cut by more than 50 percent. In order to squeeze enough dollars out of the budget for the President's new hydrogen initiative, other critical energy programs were severely cut. Yet the administration's hydrogen program is years away and cannot serve as a substitute for conservation, energy diversification, or other key energy programs. Moreover, a proliferation of ''new'' initiatives have been announced by this administration that are purported to solve our energy needs, especially for fossil fuels. We have the hydrogen initiative, a carbon sequester program, FutureGen, a national climate change technology initiative, and more. My question is: Can anyone explain how these ''new'' initiatives will work together? Where is the money to provide for all of this without compromising other important efforts? The fact remains that there is no major increase in real funding or commitment for energy programs, just a proliferation of empty words from this administration. I do not believe we can treat our energy illnesses with the administration's current budget prescription.

In the 107th Congress, both the House and Senate actually passed comprehensive energy policy bills. After lengthy

debate in conference, important progress was made. A number of compromises were struck, but in the end the conferees could not reach a final agreement. This should come as no surprise.

In fact, this administration made no real effort to help get a comprehensive, national energy strategy passed. President Bush suggested that energy was a cornerstone of his administration's agenda, but what did he do during the energy conference in the 107th Congress? Nothing. Oh, his rhetoric may have sounded good on the campaign trail. He tried to talk a good game, but when it counted, the administration took a decidedly hands off approach.

This new Senate Energy bill, S. 14, the House Energy bill, H.R. 6, and the White House's interest overall are intended to cater to the administration's friends in industry. That is it. That is all. In its present form, these energy bills are no victory for our country. They are a victory for special interests and a text-book example of our inability to set a long-term energy policy course. Now, we are on the brink of another important opportunity squandered. While there are some solid trees planted in the bill, this legislation will not produce the diverse energy orchard we must have to meet our needs down the road. The President and the Republican-controlled Congress are simply not prepared to make the tough choices that the Nation needs for a viable, long-term energy policy. How long will we wait?

The President would love a one-day Rose Garden ceremony and a 2004 campaign press release. But, given this administration's track record, an energy bill would simply be another empty soapbox for this President to stand on, as he has already demonstrated with the education soapbox, the farm legislation soapbox, Afghanistan soapbox, and the Homeland Security soapbox, and other soapboxes. The Congress has passed bills and supported the administration's rhetoric, but then the necessary resources to carry them out never materialize. This is the same fate that awaits an energy bill this session.

It takes leadership and it takes hard work to move forward in a responsible, balanced, and intelligent way on energy policy. Yet this administration makes do with a cheap knockoff. It looks like the real thing, but it is a fraud and a fake. It is much like cotton candy. At first glance, it may look good, but there is just no nutrition. In reality, it is just puffed air.

In the last 5 years, I have worked hard to help develop a balanced and bipartisan package of provisions to advance our national energy policy goals—provisions that could go a long way toward addressing both the near- and long-term energy needs of our Nation, while also providing numerous benefits both at home and abroad. These provisions garnered bipartisan support in the Senate Energy bill in the 107th Congress, including clean coal, climate change, international technology transfer, and other important provisions. Together, these initiatives represent a bold new enterprise—stepping stones along a 21st century energy pathway.

Yet the administration seems intent on just blocking many of these bipartisan ideas. For example, in a May 8, 2003, statement on the Senate Energy bill, the White House stated, in part:

> The Administration is not convinced of the need for additional legislation that would attempt to limit or direct U.S. global climate change, and will oppose any climate change amendments that are inconsistent with the President's climate change strategy . . . we urge the Senate to allow . . . the President's strategy to go forward unimpeded.

Well, I continue to ask, just what is the President's strategy—cotton candy?

Last session I introduced legislation with Senator TED STEVENS of Alaska that would allow the United States to deal more easily with the complex issues involved in climate change. The amendment to be offered by Senator BINGAMAN is based on last year's Senate-passed provisions. It would create a comprehensive strategy based on credible science and economics to guide American efforts to address climate change issues in our own backyard and around the world. This amendment also would establish a major research effort to invent the advanced technologies that we will need to effectively reduce greenhouse gas emissions that contribute to global warming. We must develop a commonsense package of technology, science, policy and other market-based measures to address this growing global problem. And it is growing. The question is what are we waiting for?

Specifically, the Bingaman amendment includes provisions that would commit more than $4 billion during the next decade to vastly expand U.S. research into technology that could help to address the problem of global climate change. The amendment provides for the creation of a more focused administrative structure within the Federal Government, including an office in the White House to coordinate and implement a national climate change strategy. We cannot continue to just ignore this problem.

This amendment does not mandate a reduction of emissions by American companies. Instead, this package places the Nation on a commonsense glidepath that is both achievable and sustainable. It provides the framework to address the long-term goal of stabilizing atmospheric greenhouse gas concentrations by working with other nations, while leaving the actual technology and policy decisions to energy experts and the marketplace.

China, Brazil, and India, among other states, will soon surpass the industrialized world in emissions of greenhouse gases. It is important that we work in coordination with these nations to reduce their emissions at an early stage. American know-how, technology, and ideas can help to lead to the implementation of a range of marketable clean energy technologies, not just in the United States, but also around the world.

It is time for real action. A cherry-picked energy plan based on soliciting big industry campaign contributions is a bankrupt policy. It takes this Nation nowhere, and it puts our future at risk.

We cannot continue energy programs and budgets if we ever hope to meet our long-term needs. We cannot continue forestalling the development of a long-term energy strategy with a phantom plan. The Nation is at a turning point. Our energy policy needs must stop being dominated by a crisis management policy. We must work to enact appropriate energy legislation so that we avoid the consequences of our long failure to respond. We cannot wait for the next energy crisis or the next spike in natural gas prices—or the next California electricity debacle. We cannot just go out and seize another oil rich country in order to solve our energy problems. We must enact bipartisan energy legislation that will deliver a thoughtful and reasoned energy package.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I hope we are moving toward the opportunity to vote shortly. But, in the meantime, I cannot resist making a few comments.

I don't see it at all the way the Senator from West Virginia has described it. Over the last couple of years, I have worked very hard to bring an Energy bill before the Senate. I believe we have an Energy bill before us that is very broad, that is very encompassing, and that is very balanced. That is what we have needed to do.

We have been working now for 2½ years, and we generally have not been able to get over the obstacles to be able to get it completed, and I think I understand why. But it is time for us to decide: How important is it for us to have an energy policy?

The first thing this administration came up with when it came into office was an energy policy with a direction, and we have been fooling around with it ever since.

Last year, we couldn't even get it through the committee. We had to go right to the floor. We went to the conference committee and worked very hard. We did not succeed.

But this is a balanced approach. We are talking about an opportunity to have conservation, which is one of the things we need to do in energy. We are talking about the opportunity to have alternative sources of energy, which we will come to over a period of time.

I remember very much a number of years ago somebody coming to Casper, WY, talking about energy, saying: We have never run out of energy because we have always found a new source.

Well, we probably will, but we need to be doing that in research.

The bill involves research in a variety of different areas that relate to energy. What else could you do besides research? There is a very great emphasis on hydrogen in this administration and doing something that will move us to a different kind of energy opportunity. Coal might be the basis for that opportunity. It would be much more economical to move.

Lots can happen in the future. What we are faced with doing in this bill relates to the fact that the energy industry has moved faster than we have moved. This is not a matter entirely of setting a future; it is a matter of catching up with what has already been done. And much of that is evidenced in the electrical industry.

Years ago everything we did was designed to have an energy company and an electric company that had their own distribution. They did their own generating. It was all in one area. That is not the case anymore. Thirty percent of electrical energy is generated by merchant generators. That energy has to be moved from the generator to the market. It is quite a different situation. It is already there, yet we seem to resist talking about it. We seem to resist accepting it. We seem to resist making that an advantage for us rather than a problem, and we have an opportunity to do that.

One of the other issues that is emphasized is domestic production, of course. It has already been pointed out that some 60 percent of oil comes from overseas. We are talking about the possibility of shortages of natural gas. I can tell you something: We have a lot of natural gas right here in this country, much of it in the west where I am from. We could be producing a great deal more if we had the policy to go ahead and do that, if we had the opportunity to have multiple use of lands to protect the environment and produce at the same time, to be able to have the transportation to move it to the market. These are the things that are there and available. That is what this bill is about.

To suggest that this bill does not have any substance to it is simply not right. It is a good excuse if you don't want to vote for it. But the fact is, there is substance. The fact is, it does move us forward. The fact is, we need to move it on.

We are talking now about an electric title, which I think is crucial. We were just upstairs talking about what energy does for jobs. Remember the economy started to turn down in the year 2000. We have been working at all kinds of things ever since. Here is one that has probably more of an immediate impact to jobs than anything else we could do, not only in production but, of course, it has an impact on all business activities.

How important is electricity to us? Everything we do—travel, gasoline, natural gas, all these things. So I guess it is sort of frustrating to hear there is no basis to this, that we don't need to hurry doing this. Yet the fact is, it is probably one of the most needed things we have had for a number of years. And yet we continue to find excuses for not going forward.

I hope we can move. We can complete this bill this week. We have already discussed almost all these items for a long time. It is time to move, and I hope we do.

I yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Madam President, I commend Senators CANTWELL and BINGAMAN for their amendments to the electricity title that will, in effect, ban all forms of market manipulation and add important merger provisions. I am terribly disappointed that the Cantwell amendment failed by a vote of 48 to 50. She did an extremely fine job of laying out this program. I am sorry it didn't pass. It should have. I think there will be some Senators who voted against her amendment who will regret having done so.

We know that the energy crisis in California in 2001 resulted from market manipulation and price fixing. People of the State of Nevada were severely hurt by this manipulated electricity market, as were consumers all over Western States.

The State of Nevada has just completed the most contentious legislative session in the history of the State. The Governor of the State, after the regular session ended, had to continually call special sessions. I don't really know how many he called—two, three, four, five—but they were there for a long time. Finally, because nothing could be completed, the Governor filed a legal action with the Nevada Supreme Court. After the Supreme Court acted, action was taken. The provision in question that went before the supreme court is whether the Nevada Legislature had to pass tax increases by a two-thirds vote. The Nevada Supreme Court said no and they said yes, but regardless of that, I spoke to the majority leader from Nevada, Bill Raggio, today. He said he made the determination that it was going to pass by two-thirds, and both the assembly and the house ultimately did that.

The reason I mention the difficulty they had is because of the tremendous burden the State of Nevada had in not having enough revenues to meet the projected deficit, $1 billion in the State of Nevada, much of which was caused by the problems that developed in California with manipulating the energy prices there.

The State of Nevada had other problems: unfunded mandates that we have passed on to them with homeland security and Leave No Child Behind, which has left a lot of kids behind. The fact is, the electricity rates had a lot to do with that very difficult legislative session. That session took a long, long time to complete. Since 1999, electricity rates in the Las Vegas area have increased by more than 60 percent. Over the same period, natural gas prices across Nevada have doubled. It is a sad state of affairs that some seniors, especially, and low-income families in Nevada are being forced to go without prescription drugs or cut back on food in order to pay their electricity rates. That is a fact.

The bills that come from these increased electricity rates are a real burden, as the Senator from Washington, Ms. CANTWELL, mentioned today. She read specific letters from people in the State of Washington where these prices were preventing them from getting proper medical care and having the ability to pay their rent. The same applies, of course, in Nevada.

These wild price increases in electricity were painful to homeowners. They also made it hard for businesses to expand or make long-term plans. Nevada consumers were being asked to pay for the same very expensive long-term contracts negotiated by utilities in 2001 at the time of the California energy crisis. It cost Nevada ratepayers hundreds of millions of dollars.

Nevada Power, the power company that serves the Las Vegas area and southern Nevada, has flirted with bankruptcy. It is rated at junk bond status where in the past it was one of the strongest utilities in America. What does this junk bond status mean? It means the cost of money for the utility to purchase power for Nevada is very high.

The weakened financial condition of our utility is a burden to our ratepayers. I can remember during some of this time that I had to call the Governor of California to see if there could be some arrangement made so the power that the people of the State needed coming from California could be provided. I had to have a signoff from the Governor of California. This was difficult. They were in deep distress but their distress was passed on to Nevada.

The weakened financial condition of our utility is a burden to our ratepayers and the taxpayers of the State of Nevada. After Enron was exposed for its unfair and unethical practices, whether it was Fat Boy or Get Shorty, all these practices had an impact in Nevada. After these unfair practices were exposed, a subsidiary of Enron stopped delivering electricity to Nevada Power because of its weakened financial condition. Then adding insult to injury, this Enron subsidy sued Nevada Power for the losses it might incur if it couldn't sell the power at the contract price.

In a recent ruling, FERC upheld the contract the utility signed at these exorbitantly high prices. Again, our ratepayers were not protected from abuses during the California energy crisis. It is not consistent with rational thought that FERC could do this but they did it.

As the western energy crisis and Enron's collapse made clear, electricity markets are ripe for manipulation unless clear safeguards are put in place and companies are held accountable. The electricity title should ban all forms of market manipulation and contain concrete penalties for those that break the rules. The electricity title should strengthen FERC's authority to review public utility mergers for electric and gas—there will be an amendment that will focus just on gas in this regard—holding company mergers and generation assets, and ensure any consolidations are in the public interest.

I extend the appreciation of the entire Democratic caucus for the work done by the manager on our side, Senator BINGAMAN. Senator BINGAMAN is an intelligent Senator. He is experienced. He has done everything he can to help this bill be a bill that is a good bill which is indicated by the tremendous amendments he has filed that we will vote on in the next few hours.

Last year Democrats worked with Republicans to pass energy legislation by a vote of 88 to 11. This vote was to strengthen our national energy security, safeguard consumers and taxpayers, and protect the environment. The heavy vote is an indication that we were able to accomplish that.

That vote came after 24 hours of debate over the course of 8 weeks, and only after the Senate dispensed with 144 amendments.

Madam President, the distinguished Senator from Tennessee, the majority leader, has said we have been on this for 16 days. He has to say that with tongue in cheek. Many of those days have been Fridays and Mondays, when everyone knows when you turn to a bill for a day or two and it is a Friday or Monday, that is like turning to nothing. It is filler. Nothing happens. Most of those days the managers weren't even here. They said we are going to energy on short notice. The 16 days the distinguished Senator from Tennessee talked about really is more like 7 or 8 days.

As we know from past experience, the effort to craft comprehensive energy policy involves working through a series of complex issues. We are currently working through one of the most complex issues right now, electricity policy. These issues take time to debate, and we have a duty to the American consumer to ensure that we carefully consider what our energy policy will look like in the future. We have spent significantly less time debating the Energy bill this year. We have considered 42 amendments and held 15 rollcall votes. We have spent less than 7 days on this bill, considered 102 less amendments, and conducted 20 less rollcall votes than last year. There are a number of issues outstanding: Electricity; global warming; renewable portfolio standard; CAFE standards, on which we have debated two amendments but others need to be considered; hydroelectric dam relicensing; nuclear energy; natural gas; energy efficiency incentives; wind energy; carbon sequestration; exploration of the Outer Continental Shelf, and the energy tax package, just to name a few.

These amendments offered on this Energy bill dealing with electricity are not specious amendments, they are substantive amendments. The Cantwell amendment vote was 48 to 50. Without arm-twisting on the other side, Senator CANTWELL would have won. These are serious amendments people wish to offer. They are not single amendment issues. I expect there will be several amendments on each subject. We ended with a good product last year when we let the Senate work its will on the legislation. We need to spend adequate time this year to get a similar result.

I see the Senator from Florida on the floor. My understanding is that he wishes to speak.

Mr. THOMAS. I wonder if it would be possible to propound this unanimous consent request.

Mr. REID. Madam President, the Senator has been here all day. It is my understanding that the Senator wishes to speak; is that right?

Mr. NELSON of Florida. Yes, for perhaps only 3 or 4 minutes.

Mr. REID. I thought the Senator had longer to speak.

Mr. NELSON of Florida. I will accommodate the leadership. Whatever is the pleasure of the leadership.

Mr. DOMENICI. Madam President, the Senator has no right to decide who speaks. They have to seek recognition.

Mr. REID. Madam President, as I have said several times during the day, and yesterday and the day before, I have the greatest respect for the Senator from New Mexico. But the Senator from Florida, who is gracious and said he would take just a few minutes, has a right to speak as long as he wants to before we have votes on this.

Mr. THOMAS. The Senator from Wyoming was on the floor before he was, however.

Mr. REID. I have the floor.

Mr. DOMENICI. The Senator cannot dole out the time. He has no right to dole the time out to other Senators, Madam President.

Mr. REID. Madam President, I have the floor, and I have the right to speak about anything I want to speak about. The fact is, the Senator from Florida has been here several times today.

Mr. DOMENICI. Madam President——

Mr. REID. I have the floor, Madam President. I have the floor.

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. The Senator from Florida has been here several times during the day. He has a right, prior to our entering into this unanimous consent agreement, to speak for as long as he wants. He said he chooses not to do that, and that is in keeping with the courtesy that this junior Senator from Florida extends to everybody. I want to make sure he doesn't have hurt feelings and that he has the opportunity to speak. He knows the rules of the Senate and he has a right to speak if he wishes.

Having said that, I am willing now to have this unanimous consent agreement proffered.

Mr. THOMAS. Madam President, I ask unanimous consent that there now be the following debate in relation to the listed amendments: Bingaman No. 1413, 10 minutes equally divided in the usual form; Bingaman No. 1418, 10 minutes equally divided in the usual form. I further ask consent that following the debate, the Senate proceed to a vote in relation to amendment No. 1413, to be followed by a vote on amendment No. 1418, to be followed by a vote in relation to the Feingold-Brownback amendment No. 1416, provided there be 2 minutes of debate equally divided prior to each vote.

Mr. REID. Madam President, reserving the right to object, I ask if my friend, the distinguished Senator from Wyoming, would modify his unanimous consent request to allow the Senator from Florida, prior to this kicking in, to speak for up to 5 minutes.

Mr. THOMAS. I have no objection to that.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. Madam President, not wishing to object, I just indicate that I did not intend to ask for 10 minutes of debate on each of my two amendments, and then in addition ask for 2 minutes equally divided. I just intended to have some time to refresh people's memories of what the two amendments were, since they were proposed and debated yesterday.

As far as I am concerned, once I have had a chance to describe my amendment, and there has been any discussion in opposition, we can vote on the first of the Bingaman amendments.

Mr. REID. Madam President, I ask the Senator to further modify the request to eliminate the 2 minutes of debate prior to the vote.

Mr. THOMAS. That will be fine.

The PRESIDING OFFICER. Is there objection to the request as modified?

Without objection, it is so ordered.

The Senator from Florida is recognized.

(The statement of the Senator from Florida, Mr. NELSON, is printed in the RECORD under ''Morning Business.'')

AMENDMENT NO. 1413

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, as I understand it, I now have 5 minutes to describe the first of the two amendments I have offered to the electricity title of the bill.

Let me make the obvious point at the beginning of my description, and that is that the amendment tries to do two basic things. It proposes language which would ensure that someone at the Federal level—in this case, the Federal Energy Regulatory Commission—has jurisdiction to review purchase and sale of generation companies

and generation assets, the companies that actually produce the electricity about which we are talking and which we have all come to expect to get when we turn on the switch and see the room light up.

We ought to have someone with authority over that because under the Domenici substitute as it now is, nobody has authority at the Federal level. It is not realistic to suggest the States can handle that problem. They cannot. There is no prohibition in law, and there will be none under this proposal, to one company acquiring all the generation in one particular region or one company acquiring all the generation in one part of the country. We should have someone reviewing the acquisitions of that generation capacity to be sure that ratepayers are looked out after. That is the first thing the amendment does.

The second thing the amendment does is to prohibit cross-subsidy between utility companies and affiliated companies that may be in the same general holding company. We are eliminating the Public Utility Holding Company Act, so there is going to be no restriction as provided under that act. We need to be sure that cross-subsidy does not occur.

I have an article dated December 26 of last year in the Wall Street Journal which does a very good job of pointing out the problem that needs to be fixed. It says:

> Energy companies burned by disastrous forays into commodities trading and other unregulated businesses are increasingly seeking to pass some of the financial burden on to their utility units. This could lead to higher electricity rates for consumers in coming years.

Then it goes on to say:

> Utilities are being nudged to buy assets from affiliates to make loans to down-at-the-heels siblings or pass more money to their parent companies.

The article goes through a series of examples of how this is happening.

One example I thought was particularly constructive was Duke Energy. In July of 2001, a Duke accountant contacted regulators complaining that expenses generated by unregulated parts of the company were being transferred to the books of Duke's utilities.

We need a capability at the Federal level to protect the ratepayers and to ensure that does not happen. We do not have that in the underlying Domenici substitute. The underlying substitute does say that the Commission shall look out to be sure the public interest is served, and that is useful. That, unfortunately, is very general.

What we need in the law, I firmly believe, is a bright line requirement that in order for these kinds of acquisitions and sales to occur and to be approved, the Federal Energy Regulatory Commission ought to determine that there is not going to be a cross-subsidy as a result, that utilities will not be loaded down with debt from nonutility companies held by the same company. We need to keep the protection in the bill.

Utilities are a different kind of business. It is important that the lights turn on when we flick a switch. It is important that other utilities function. In this case, in this electricity title, we need to be sure that ratepayers are adequately protected.

I am persuaded that this amendment will strengthen the bill. I hope very much my colleagues will support it. It is exactly the same language we had in the bill last year, and last year there was an effort to delete the language which I am offering as a second-degree amendment, and that effort lost in a vote of 67 to 29. So a majority of the Senate is on record supporting the language I have proposed as an amendment to the underlying Domenici substitute. I hope Members will support the amendment. It will strengthen the electricity title. I very much believe it is good public policy and will serve us well in the years ahead when some of these problems recur, as I fear they will.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, how much time do I have?

The PRESIDING OFFICER. Five minutes.

Mr. DOMENICI. Madam President, I wish to make a point in case there are people observing the Senate. Senator NELSON from Florida indicated he had been waiting a long time—maybe all day—to be heard. There are a lot of Senators all day long who would like to come to the floor and be heard. The Senate is not the place where we just come down to the floor and automatically, if we come here, we ought to be heard. We have business, and we have rules. I am glad the Senator found time and we allowed 5 minutes and we allowed Senator BYRD 30 minutes, but we are engaged in a bill we are trying to pass.

I had a lengthy discussion with my friend from Nevada, and I have no doubt he wants to get this bill finished. I thank him for his willingness to move along. We will have another amendment ready pretty soon.

My objection to the Bingaman amendment is very simple. He alludes to last year and what happened with amendments such as his last year. There was no alternative last year. There is an alternative this year. It is the underlying electricity bill, which clearly protects the citizens, the users, and all of those concerns about mergers.

The merger review in our section is supported by groups such as the National Rural Co-ops, the rural power people, and many others. If, in fact, we did not have protection in this area with reference to gobbling by merger, obviously they would not be for this underlying bill. So I oppose this amendment because we do not have to expand FERC's merger authority. They have merger authority.

Under current law, electric merger departments are heavily regulated. FERC, the Department of Justice, and the Federal Trade Commission must review proposed mergers for their impact on competition. States also review proposed mergers. Expanding FERC's authority to cover the acquisition of generation facilities is unnecessary. We have plenty of merger authority if that is what we are worried about. We are getting rid of undue regulation. There is no need to impose more.

Further, changing FERC's review standards will impede efficient transactions, and we do not need that today, either.

So while I have great respect and admiration for my friend, I believe the electricity bill that is pending before us, which has been carefully put together, has broad support all based on the fact that it fits all the pieces together properly. It should be left alone. We do not have to add more merger review layers.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, my understanding is that at this point, under the unanimous consent agreement, I am allotted 5 minutes to talk about my second amendment. Is that accurate?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 1418

Mr. BINGAMAN. Madam President, I will describe this second Bingaman amendment which was offered last evening. It was offered at a time when very few Senators or their staffs were in their offices and were not following this issue, I am afraid. The amendment tries to clarify a point in the bill that I think is very important.

Senator DOMENICI's substitute contains a delay in the issuance of FERC's standard market design rulemaking and it delays it until July of 2005, and that is not of concern. I accept that. Many believe the rule goes too far, should be dramatically modified, changed or completely abrogated, but others think we should go ahead right away. He has decided to put it off until July of 2005. So I am not involved in that in my amendment.

My amendment leaves the delay of the standard market design rule in place so it will still be delayed until July of 2005. However, in an effort to prevent FERC from renaming its rule, I believe that was the purpose that Senator DOMENICI and his staff had in an effort to keep FERC from renaming its rule and issuing that same rule, or something very close to it, under a different title, the bill would prohibit any rule or order of general applicability on matters within the scope of the rule. I think the clear meaning of that

language is that FERC could not issue a rule or order a general applicability on any issue that is dealt with in the proposed standard market design for 2 years from now.

Standard market design covers a world of issues. One example, FERC currently has a rule in process related to interconnections to the transmission grid. No matter what that rule said, FERC would be prohibited from issuing that rule, as I read this language. I do not think that was the intent of my colleague from New Mexico or others who worked on this bill.

There are even rules that the Commission is required to issue by provisions in the bill. We have various provisions in other parts of this bill that say the Federal Energy Regulatory Commission shall issue an order on this issue, the Federal Energy Regulatory Commission shall issue an order on this subject. The bill requires rules on mergers, on transmission access by public power entities, on participant funding, and on other matters.

We are in the ironic position of having this one provision which says an order cannot be issued, a general applicability, on any subject that is covered by standard marketing design and at the same time we are saying you have to go ahead and issue orders of general applicability in these other areas.

So I am trying to get that clarified. I do not believe we are in disagreement on the substance but I do think it is important that we provide clear language or else we will be shooting ourselves in the foot.

The amendment I am offering says we would not want FERC issuing any final rule or order of general applicability establishing a standard market design. I think that is what we are trying to do. That is all my amendment does is to clarify that is what we are trying to do. I hope everybody will support it. I think it will make very clear that FERC will be able to go ahead and do the work that it is required to do in the next couple of years, between now and July of 2005. If we have another crisis such as we have had out in California or out in the west coast, we are going to be expecting FERC to issue orders of general applicability. They should be doing that. They should not be issuing a standard market design, and I am not suggesting they should, but they should have the authority to issue orders of general applicability and that is exactly what my amendment would give them.

I hope very much my colleagues will support the amendment and we can improve the bill by doing so.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, one of the most difficult negotiations in this bill was getting the language that prohibited the finalization of SMDs until July 1, 2005. The occupant of the chair knows that. That is what we have been talking about. Other Senators wanted a longer time. Some wanted a shorter time. Well, Senator BINGAMAN changes the language surrounding that July 2005 agreement. Frankly, I would be letting down all of those different groups that worked together to negotiate the language that said the finalization of SMDs will be delayed until July 1, 2005; by changing the words around it, all kinds of groups will be saying we have let them down; we changed what we agreed to.

In other words, I regret to say that the exact words surrounding this 2005 letter expansion are binding. Senator BINGAMAN wants to clarify it one way. There will be a whole group of people who worked on it saying, well, I did not want it clarified that way. I wanted it clarified another way.

The point is, it will work like it is. It might work like he wants it to work but the problem is we agreed to these words. Believe me, I am not agreeing to words just for words. They will work. It is just that the distinguished Senator would like to be more precise, more specific, his way. In doing that, he puts this Senator, who has worked this out with all of these other people, in a bind that if I say, yes, let's change it, then we are going to have telephone calls besieging Senators all over saying vote no; the senior Senator from New Mexico is not doing what he told us he would do.

Now, I regret that but that is just the result of the way we do things. I am very proud of the words, the date, and the negotiation. I do not lose a lot of Senators on that language and that date. Maybe six or eight wanted more time but we got a pretty good deal for almost everybody. So I just cannot take the risk. I am sorry.

With that, I do not need any more time. I yield back any time I have remaining.

VOTE ON AMENDMENT NO. 1413

Mr. DOMENICI. I move to table the first Bingaman amendment, which is the pending subject matter, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—53

Alexander	Bennett	Brownback
Allard	Bond	Bunning
Allen	Breaux	Burns
Campbell	Grassley	Nelson (NE)
Chambliss	Gregg	Nickles
Cochran	Hagel	Roberts
Coleman	Hatch	Santorum
Cornyn	Hutchison	Sessions
Craig	Inhofe	Shelby
Crapo	Kyl	Smith
DeWine	Landrieu	Specter
Dole	Lincoln	Stevens
Domenici	Lott	Sununu
Ensign	Lugar	Talent
Enzi	McCain	Thomas
Fitzgerald	McConnell	Voinovich
Frist	Miller	Warner
Graham (SC)	Murkowski	

NAYS—44

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Byrd	Feinstein	Pryor
Cantwell	Graham (FL)	Reed
Carper	Harkin	Reid
Chafee	Hollings	Rockefeller
Clinton	Inouye	Sarbanes
Collins	Jeffords	Schumer
Conrad	Johnson	Snowe
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NOT VOTING—3

Biden	Kennedy	Kerry

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. FRIST. Mr. President, I ask unanimous consent that the next two votes in this series be limited to 10 minutes each.

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

Mr. FRIST. Mr. President, there will be additional votes this evening. We are going to stack these two rollcall votes at 10 minutes. The chairman and ranking member have been here since 9 o'clock this morning. They have been working hard. We will continue tonight. We will finish the electricity amendment today. Therefore, Members can expect votes into the evening.

VOTE ON AMENDMENT NO. 1418

The PRESIDING OFFICER. The question occurs to the amendment of the Senator from New Mexico.

Mr. THOMAS. Mr. President, I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 314 Leg.]

YEAS—54

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Murray
Bond	Fitzgerald	Nelson (NE)
Breaux	Frist	Nickles
Brownback	Graham (SC)	Roberts
Bunning	Grassley	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Cantwell	Hollings	Smith
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Cornyn	Landrieu	Talent
Craig	Lott	Thomas
Crapo	Lugar	Voinovich
DeWine	McCain	Warner

NAYS—44

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Nelson (FL)
Boxer	Feinstein	Pryor
Byrd	Graham (FL)	Reed
Carper	Gregg	Reid
Chafee	Harkin	Rockefeller
Clinton	Inouye	Sarbanes
Collins	Jeffords	Schumer
Conrad	Johnson	Snowe
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NOT VOTING—2

Kennedy	Kerry

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1416

The PRESIDING OFFICER. The question now occurs on the Feingold amendment No. 1416.

Mr. DOMENICI. Mr. President, parliamentary inquiry. Is there any time to speak on this amendment?

The PRESIDING OFFICER. There is no time to speak on the amendment.

Mr. DOMENICI. I move to table the Feingold amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. LOTT) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

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

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 315 Leg.]

YEAS—50

Alexander	DeWine	Lugar
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Pryor
Bunning	Graham (SC)	Santorum
Burns	Grassley	Sessions
Campbell	Gregg	Shelby
Carper	Hagel	Smith
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Thomas
Cornyn	Kyl	Voinovich
Craig	Landrieu	Warner
Crapo	Lincoln	

NAYS—48

Akaka	Dorgan	Lieberman
Baucus	Durbin	McCain
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Brownback	Graham (FL)	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Roberts
Chafee	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Collins	Johnson	Schumer
Conrad	Kennedy	Snowe
Corzine	Kohl	Specter
Daschle	Lautenberg	Stabenow
Dayton	Leahy	Talent
Dodd	Levin	Wyden

NOT VOTING—2

Kerry	Lott

The motion was agreed to.

Mr. DOMENICI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I wonder if the minority whip will advise me—we are on the electricity title—are we ready to vote on passage of the electricity title or do you have additional amendments?

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Madam President, as I indicated last night, we have Senator DAYTON who still wishes to offer amendments. Senator CANTWELL has at least two more amendments. Senator FEINSTEIN has an amendment. Those are the ones I know of at this time. And Senator BOXER has an amendment. Senator CANTWELL is here. She has a very important amendment to offer.

I relate to my distinguished friend, the manager of this bill, that Senator KENNEDY is here and wishes to speak also. We are in a position where we are ready to move forward on the electricity title with a number of amendments.

Mr. DOMENICI. Does Senator KENNEDY have an amendment?

Mr. REID. The Senator from New Mexico will have to ask Senator KENNEDY.

Mr. KENNEDY. No. It has been the decision of the leadership to have a vote on Judge Pryor tomorrow. Under the agreement, we will have 1 hour for debate. This is an important nomination. I wish to address the Senate on that matter since we are going to be under very strict time limitations on the morrow.

We had that series of votes. I want to accommodate the managers of the bill. If there is an amendment that needs to be disposed of, I will be glad to wait; otherwise, at some point, I wish to address the Senate because this is an extremely important nominee. The nomination was just reported out of committee, and we will be voting in a very short period of time on the nominee. It is an extremely important nomination. If the decision was to not have that vote on the morrow, I am glad to withhold my statement and make my statement at the time the Senate addresses the nomination. I will certainly work with the floor managers to work out a time that is suitable, but I am ready to speak. If there is a pending amendment, and it is the desire of the floor manager to move ahead, I will accommodate him.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I say to the distinguished Senator from Massachusetts, I will speak to the majority leader, as soon as an amendment is laid down, with reference to the issue Senator KENNEDY just raised. I understand if we proceed on an amendment, we will have an hour or so, at which time I will talk with the majority leader and tell him of your desire and others to speak, and see what his wishes are in that regard.

Mr. SCHUMER. Will my colleague yield?

Mr. DOMENICI. Without losing my right to the floor.

Mr. SCHUMER. There are others who wish to speak in addition to the Senator from Massachusetts.

Mr. DOMENICI. I will mention the Senator's name.

Mr. REID. I know the Senator from New Mexico has the floor.

Mr. DOMENICI. Yes.

Mr. REID. Madam President, earlier today I alerted the Senate that we would have members of the Judiciary Committee come to the floor, and we have members of the Judiciary Committee here today. We have the Senator from Massachusetts, who is a three-decade member of that committee. We have Senator SCHUMER, who is a relatively new member of that committee. Sometime tonight they are going to speak on the Pryor nomination. I indicated that would happen, and that is going to happen. They have an absolute right to speak. I know the Senator from Massachusetts is being kind and generous, but he has a right to speak. It can either be done now or 5 minutes from now or 10 minutes from now, but the Senator from Massachusetts is going to get the floor, and he is going to speak on the Pryor nomination, as I alerted the Senate today that would happen.

We did not make the choice that we would vote for the seventh time on Estrada today. The votes have not changed. We did not make the decision

we would vote on Priscilla Owen. We have voted three times, and the votes have not changed. We did not make the decision that the Pryor nomination would be voted on without a single bit of debate on the Senate floor, but just move it forward for cloture. This is not as if it is a surprise.

We telegraphed our intentions today that there would be members of the Judiciary Committee who would come to the Chamber and speak, and that is going to happen tonight.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I cannot do anything more than that, and I think the distinguished Senator from Massachusetts accepts my statement as an honest statement.

Mr. KENNEDY. Yes.

Mr. DOMENICI. I will leave the floor. I will find the leader, and I will tell him what is going to happen. I will seek his advice and give him my advice. I very much appreciate the Senator from Massachusetts letting me know. We have a number of amendments left. We have important legislation before us. It is absolutely impossible to do the people's business if, in fact, during the next 12 hours we have 6 or 8 hours taken up by speeches with reference to a judge. We will get it done, but we will be here Sunday, which is all right with this Senator. I do not think I want to let that happen under my watch as manager, but I guarantee my colleagues, for those who insist they are going to speak, I can assure them we are going to be here.

Sooner or later the speeches will run out, and we will be here, and we will take up the pending amendments on this bill. I have been told that by the leader unequivocally. I assume that is true if only 60 Senators stick around. So long as we do not lose a quorum, I presume we are going to be here on Friday, on Saturday, and on Monday to finish this bill. Senators have their rights, but we have an obligation to do this work.

I say to the distinguished whip, if he will call up the next amendment, I will leave the floor and find out what the leader will do about this, and perhaps we can come up with some accommodation with reference to this issue. I thank Senator KENNEDY for his willingness to let me do that.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I will proceed then. I just wish to indicate, as someone who also has been a bill manager, I understand completely the frustration the Senator from New Mexico has and his desire to move along. As Senator REID mentioned, we did not anticipate at the time this nominee was reported out that we would have a vote so early in the consideration.

Then last week, the chairman of the committee made a very extensive statement about the nominee and also the procedures of the committee itself, and I want to attempt to correct that record.

We are on the eve of a vote on the nominee, and that has been established by not the Senator from New Mexico but by the majority leader. We are just trying to meet our responsibilities as members of that committee who have strong views and want to share those views with the membership and we also feel a responsibility to tell, to the extent the American people are interested, what our reservations are in terms of the merits and the process.

I say to the Senator from New Mexico, I plan to be here this evening, and if it is the desire of the floor managers to consider another amendment, I am glad to take my turn, although I do think we ought to have at least an opportunity to speak in the next few hours.

I will begin my statement on this nominee. If it so works out and the Senator from New Mexico wants to intercede, I will be glad to try to accommodate him.

Mr. DOMENICI. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. DOMENICI. How long does the Senator intend to speak?

Mr. KENNEDY. I expect to talk probably 30 minutes.

Mr. DOMENICI. Does the Senator from New Mexico have the floor or the Senator from Massachusetts?

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. I would rather not get caught into a precise time limit at this time but my general sense is about 30 minutes.

Mr. DOMENICI. Will the Senator yield? I will get right back to him.

Mr. KENNEDY. That is fine.

Mr. DOMENICI. Madam President, let me repeat——

Mr. KENNEDY. Madam President, I think I have the floor but I will yield to the Senator from New Mexico for whatever comment he wants to make.

Mr. DOMENICI. I ask for a couple of minutes, and it will not take any longer.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Mexico.

Mr. DOMENICI. I thank the Senator. First, I say judges are important, and speaking on behalf of or against judges is very important. I say that not only to the Senators but to our majority leader. It is also very important that we pass an Energy bill. We have been waiting for weeks and weeks. This committee was asked to put a bill together. The Senator from New Mexico wants to get the Energy bill finished. Clearly, I find nothing in the rules that says the Senator from Massachusetts is not entitled to make his speech of 30 minutes or up to an hour. I do believe it is important, nonetheless, that somewhere along the line there be some accommodation and that we proceed to get the Energy bill finished. I understand there are four or five amendments. I wish I could see them sooner or later so I will know what they are about but nobody owes me that, either. We will take it as it comes.

I will ask the distinguished majority leader to be accommodating so we can get this bill finished, but I am doing that with great trepidation, not as to Senator KENNEDY but as to whether there is a willingness to pursue this bill with vigor if that accommodation is made. I am not sure about that based on some things that have been happening but I hope it is. It is with that in mind that I will talk to the leader, hoping it does mean that if accommodation is made, we will proceed with dispatch on the Energy bill.

I thank the Senator for yielding to me.

The PRESIDING OFFICER. The Senator from Massachusetts.

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

Mr. KENNEDY. I will be glad to yield for a question.

Mr. SARBANES. I have been listening to this discussion. Am I correct in saying that the Senator would not be seeking to speak now if the other side had not indicated that they were intending to try to bring the nomination of Mr. Pryor to the Senate on tomorrow? Is that right?

Mr. KENNEDY. The Senator is exactly correct.

Mr. SARBANES. The Senator is not inserting himself into the debate on the Energy bill seeking to slow the Energy bill down; he is prompted to do this by the fact that the other side is scheduling this nominee for a vote, I understand, with no debate whatsoever. Is that correct?

Mr. KENNEDY. Well, that is correct. It is not the members of the Judiciary Committee who are holding up the consideration of the Energy bill. It is the decision to put before the Senate, under the legitimate procedures of the Senate, a cloture petition to have a vote on this nominee, effectively shutting off all the debate.

Quite clearly, my own belief is if we had the time, and also had the time during the August recess, to complete the investigation which needs to be done on this nominee, the Senate would be much better informed, the American people would be much better informed, and the judiciary would be much better served. That is not the decision of the leadership and, therefore, we believed that as the day wore on, after 5, we would at least have an opportunity, since this is an enormously serious nominee for a very serious position and there are very serious charges, to address the Senate.

Mr. SARBANES. Will the Senator yield for a further question?

Mr. KENNEDY. Yes.

Mr. SARBANES. It is my understanding that twice this week, if I am not mistaken, we have had to go off of the Energy bill, which we are being told we must move forward, in order to

address other judgeship nominees who had previously been voted on a number of times. So we have been diverted off the track of the Energy bill by these judicial nominees, not of our doing but because of the scheduling which the other side has undertaken.

I know our assistant leader has been concerned about that as well, if I am not mistaken, in that regard. Is that not correct?

Mr. KENNEDY. The Senator is correct. As the Senator remembers, I think those votes were in the late morning and even interrupted committee work at that time, which many of us were involved in, let alone the consideration of the Energy bill.

Mr. SARBANES. I thank the Senator.

Mr. KENNEDY. I thank the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Massachusetts.

NOMINATIONS

Mr. KENNEDY. Mr. President, contrary to the widespread impression of a partisan breakdown in the judicial nomination process, Democrats in this closely divided Senate have, in fact, tried our best to cooperate with the President on judicial nominations. We have largely succeeded, even though there are a handful of nominees who we believe are too extreme.

Since President Bush's inauguration, the Senate has confirmed 140 of his nominees and so far blocked only 2. We have said ''no'' in those cases partly because these few nominees were too extreme for lifetime judicial appointments and partly because the White House and the Senate majority have tried to jam the nominations through the Senate without respect for the Senate's advice and consent role under the Constitution and without respect for the Senate rules and traditions.

The nomination of Mr. Pryor illustrates all of these issues. Even his advocates concede that his attitudes and beliefs are the very extreme of legal thinking. I am confident that when the Members of the Senate and the public fully understand and consider his prejudices and attitudes, a majority of the Senate, with the strong support of the public, will agree that he does not merit confirmation to a lifetime seat on an appellate court that often has the last word on vital issues, not only for the 4½ million people of Alabama but also for the 8 million people of Georgia and the 15 million people of Florida. In fact, this nomination does not belong on the Senate floor at this time.

The Pryor nomination was reported out of the committee as a result of a gross violation of the same committee rule of procedure which caused the Cook and Roberts nominations to be held up in the Senate floor earlier this year. The Judiciary Committee has a rule which clearly prevents the termination of debate on a nominee unless a majority of the committee, including at least one member of the minority, is ready to vote on the nominee.

This rule, Rule 4, was adopted at the insistence of Senator HATCH, Senator Thurmond, and other Republicans in 1979, when I was chairman of the Judiciary Committee, as a reasonable protection for the minority. After the rule was ignored in the Cook and Roberts case, we thought we had resolved this matter amicably and equitably. Both nominees were later confirmed based on a clear understanding that Democrats would not in the future be deprived of their rule 4 rights.

After all, these rules were put in place at the start of this Congress, with the support of the Republican chairman of the committee, and now we have seen a blatant and flagrant disregard, which is not just an issue of procedure but affects the substance of this issue in a very important way.

Just as important is the reason why Democrats were unwilling to vote on this nomination in the committee. The reporting of this nomination was totally premature because the committee was forced to move to a vote in the midst of a serious investigation of substantive questions of candor and ethics raised at the hearing by the nominee's own testimony, by his answers and non-answers to the committee's followup questions.

On Friday, Chairman HATCH presented a version of the history of this nomination and this investigation which does not comport with the facts. I want to go through that history so the Senate can fully understand that Democrats have proceeded expeditiously and responsibly and that the rush to judgment in the committee last week was an effort to cut off an important investigation. The full Senate deserves to know its result before it considers this nomination.

The basic facts on this issue are straightforward. Democrats did not invent the issue. Years before this nomination, lengthy articles in Texas and DC newspapers raised the question of the propriety of the activities of the Republican Attorneys General Association.

It was reported that the organization sought campaign contributions to support the election of Republican attorneys general because they would be less aggressive than Democratic attorneys general in challenging business interests for violations of the law. Some descriptions of this effort characterize it as a shakedown scheme. The leaders of the association denied the allegation but refused to disclose its contributors. They were able to maintain secrecy by funneling the contributions through an account at the Republican National Committee that aggregated various kinds of State campaign contributions, thus avoiding separate public reporting of the contributions or the amount of these gifts. The issue received significant press coverage during the 2002 U.S. Senate campaign in Texas especially since several Republican attorneys general have denounced the association as fraught with ethical problems.

Since Mr. Pryor had been identified publicly as a leader of the association's efforts and the ethical issues raised by it, these issues are obviously relevant to his qualifications. Senator FEINGOLD asked the nominee about it at the June 11 hearing. Until this point in the hearing, Mr. Pryor was, in Senator HATCH's own words, ''no shrinking violet.'' He had been open and honest about his personal beliefs and ideological views. He did not retreat a single step or hedge his opinions. Nor were there any ''confirmation conversions'' taking new views, contradicting old ones. Mr. PRYOR was a model of outspokenness, with clear recollections of the details of briefs, legal opinions, speeches, and other complex legal issues.

Only on the issue of the Republicans Attorney General Association were his statements cramped and fudged, his recollections virtually nil. His answers were unresponsive and incomplete. They raise serious questions about his candor and truthfulness. He was asked a broad question reciting the allegations against the association. He was asked whether, if the allegations of soliciting contributions from potential target corporations are true, his own role in the association would present at least an appearance of conflict of interest. His answer was what would have been called a ''nondenial denial'' in the Watergate days. He said the contributions were made to the Republican National Committee, not to the association. He said that ''every one of these contributions, every penny, was disclosed [by the Republican National Committee] every month.''

The association's own materials show that its contributions were being given to the association and that the writing of checks to an aggregated account of the Republican National Committee was merely a way to use a reporting loophole to mask the association's contributions and the amounts of their gifts.

Even more startling, Mr. Pryor's assertion that every penny of the contributions was disclosed by the Republican National Committee was a clear misrepresentation. The fact is, the association and its members have explicitly refused to disclose the contributions. Republican National Committee reports did not mention any association funds, let alone every penny. Mr. Pryor's statement raised a giant red flag.

Senator FEINGOLD immediately told the nominee there would be followup on this issue in written questions. On June 17, Senator FEINGOLD and I both asked the followup questions. We gave him an opportunity to review the previous answers and make them more responsive. He refused. He said: ''I stand by them.'' We asked about other details of the association's operation and his specific role in it. Once again, his

answers were unresponsive and silent on key facts.

This careful lawyer could remember the most esoteric details of complex legal cases going back many years but could not remember a single company or person he himself had solicited for the association. He could not recall whether any of the leading tobacco or other companies identified by the President were contributors. He could not remember the name of a single association member or contributor or whether he had ever personally received any of the campaign funds.

Typical was this question and answer: I asked, ''To the extent that the RAGA designated system funds were transmitted to or through another entity, did that entity disclose publicly the funds raised by or for RAGA?''

His answer was a non-answer: ''To my knowledge, RAGA complied with all the applicable campaign laws and its operations.

He later said, ''I never solicited for RAGA a contribution from any person who has been the subject of an investigation or legal action of my office.'' He refused to say whether someone else on behalf of the association had made such solicitations. He refused to say whether contributions came from companies his office might have investigated, but did not.

These issues that were raised about the telephone companies, about the calls, about the meetings, about the breakfast meetings, who was there, have all been left open. There is strong evidence that is in conflict with what the nominee has presented. This is part of the committee's work in terms of the future, to get to the bottom of this, in fairness to the nominee and so that the Senate will be able to make its judgment.

Senator HATCH's floor statement made much of the number of times the Pryor nomination appeared on the committee's agenda. In fact, the Pryor nomination was on the agenda for June 19 but the listing was obviously premature since the answers to our questions had not even arrived. The answers were received on June 25. Again, Pryor was placed on the agenda for the next day, but before any of us had a chance to examine his intricate web of answers, partial answers and non-answers. The nomination was obviously not even close to ready for consideration. Even our first look at the answers made clear there would have to be further investigation, more followup questions. Even Senator HATCH realized proceeding the next day would be inappropriate.

By this time, Pryor's statements had been widely reported and had come to the attention of many people who knew the facts and some who might cast light on the facts that Mr. Pryor could not recall. On July 2, during the Fourth of July recess, just before the long holiday weekend, extensive new material from one such source arrived at the minority office in the committee. After a brief initial review to assess the authenticity and relevance, the material was turned over to the majority staff when the Senate returned from the recess. At the same time, the chairman's staff was fully briefed about the process by which the materials had reached the committee.

Then, contrary to the chairman's floor assertion, a bipartisan group of investigators questioned the source of material in detail. No question was raised about the authenticity of the materials. On the contrary, when the joint staff shortly thereafter interviewed the author of the document, she confirmed the source had full access to them.

The material was then distributed by each side to each member. After reviewing the documents, the minority requested that a bipartisan investigation be conducted. That investigation was to begin July 15, with calls to the association's former finance director and executive director. Until then, not a single document had been disseminated outside the committee.

However, on that day, the majority gave the documents to the nominee and to the Justice Department. Someone on the Republican side gave them to a strongly pro Pryor columnist on the Mobile Register newspaper. The columnist called the former finance director, a close Pryor ally and former campaign director. That call was made before the investigators could reach her, warning her that she could expect a call from the committee staff. Although the call to her did produce some useful information, it also marked the beginning of a consistent effort by the majority investigators to interfere with the investigation.

After the interviewee stated that she might well have the files of the association, the Democratic investigator requested she provide them to the committee. The Republican investigator told her not to comply with the request and not even to comply with the request to at least begin searching for association materials in her possession.

The Mobile Register columnist disclosed and discussed the documents on July 16, and others in the press wrote about them on the 17th. The committee had a brief discussion of the documents on the 17th with the expectation that the just started investigation would continue on a bipartisan basis in accordance with an investigative plan provided to the majority.

However, at that point, the Republican investigative staff began informing the interviewees that the calls to them were not part of an official committee investigation, implying that they did not have to cooperate.

Between July 17 and July 23, many calls were made in accordance with the plan. Many of these calls did not reach the parties called.

By the time of the committee's meeting scheduled for July 23rd, the investigators had just begun accumulating significant information in accordance with the investigation plan. The day before the meeting, all nine Democrats, having considered the information available up to that point, wrote to the chairman and informed him that the investigation was producing serious and disturbing information, that it would require substantial addition time, that his investigators were interfering with it, and that after it was complete, we would want to question the nominee under oath.

The Republican staff had offered interviews with the nominee before that time, but the Democratic investigators had declined to participate until the basic investigative work had been done, and in any event, the Democratic members wanted to question the nominee in person under oath at the appropriate time.

At the meeting on July 23, the chairman rejected the minority's request out of hand. He insisted on a vote on the nomination without completion of the investigation and without further questioning of the nominee under oath. That was the situation when Senator LEAHY invoked the committee's Rule IV to prevent a premature vote on the nomination. The chairman refused to follow Rule 4 and insisted on an immediate vote.

The nine Democrats on the committee voted against reporting the nomination, and the 10 Republicans voted to report it, with one member of the majority noting that his vote to report did not mean he would necessarily vote for the nominee on the floor. He also noted that he would want to review the results of the investigation with the nominee before any floor vote.

Despite the lack of co-operation from the majority staff, the investigation has continued. It has developed new information which expands both the scope and the gravity of the original concerns. It tends to show not only that the nominee was not candid with the committee, but that his statements may have been intended to obscure facts that would raise extremely serious ethical or legal questions about the nominee's activities.

I raise these points because the chairman has suggested that these issues are not serious. They are very, very serious. I do not know how it will ultimately come out after the investigation is complete, but as I said in committee, the nomination comes to the floor with a ticking ethical time bomb which might explode at any moment.

There is no doubt that this nomination is not ripe for a vote of the full Senate. The committee majority was not willing to finish its job before reporting the nomination to the Senate. But that is no reason for the Senate to allow the nomination to be voted on, before these matters are thoroughly reviewed, and the nominee has responded.

On the issue of the merits, Mr. Pryor is simply too ideological to serve as a Federal court judge. The concern is not

simply that Mr. Pryor is a conservative. The question is not whether all of us agree with his views. Mr. Pryor's litigation positions, public statements and his writings leave little doubt that he is committed to using the law not simply to advance a ''conservative'' agenda, but a narrow and extreme, ideological agenda.

Mr. Pryor's record is clear. He is an aggressive supporter of rolling back the power of Congress to remedy violations of civil rights; he is a vigorous opponent of the constitutional right to privacy and a woman's right to choose; he is an aggressive advocate of the death penalty, even for individuals who are mentally retarded. He is contemptuously dismissive of claims of racial bias in the application of the death penalty. He is an ardent opponent of gay rights.

More than just disagreeing with much of the Supreme Court's jurisprudence over the last 50 years on issues such as privacy, the death penalty, criminal justice, and the separation of church and state, Mr. Pryor has dedicated his advocacy and litigation to rolling back widely accepted legal principles and laws. What we know about Mr. Pryor leaves little doubt that he will try to advance that agenda if he's confirmed as a Federal judge.

At his hearing and in answers to written questions, Mr. Pryor, for the most part, adhered to his past, extreme, views. He did not renounce his view that the Supreme Court's decisions in Miranda v. Arizona and Roe v. Wade were the worst examples of judicial activism or that the Roe decision was an abomination. What are we expected to believe? That despite the intensity with which he holds these views and the years he has devoted to dismantling these legal rights, he will still ''follow the law'' if he is confirmed to the Eleventh Circuit? Repeating that mantra again and again in the face of his extreme record does not make it credible that he will do so.

We know the cases that Mr. Pryor has won at the Supreme Court to narrow Federal rights, and the effect of these cases on the lives of disabled workers—of breast cancer victims like Patricia Garrett—and of the many older workers who face discrimination by State agencies.

Mr. Pryor's agenda is more far-reaching. He has consistently advocated views to narrow individual rights far beyond what any court in this land has been willing to hold.

Just this term, his radical views were rejected by the Supreme Court. In its recent term, the Supreme Court rejected his argument that States could not be sued for money damages for violating the Family and Medical Leave Act. The Court rejected his argument that States should be able to criminalize private sexual conduct between consenting adults. The Court also rejected his far-reaching argument that counties should have the same immunity from lawsuits that States have.

What is more disturbing, Mr. Pryor has plans for narrowing Federal power far beyond the Supreme Court's current case law. The Supreme Court has held that Congress has broad power under the spending clause, but Mr. Pryor's agenda would restrict Congress's power under that clause. He has praised a district court's decision to limit the ability of individuals to enforce spending clause statutes. That decision would have reversed more than 60 years of Supreme Court precedents, and it was rejected unanimously by the Sixth Circuit. Seventy-five constitutional law scholars had joined a brief opposing the decision. Yet, Mr. Pryor said that the District Court decision was ''sublime'' and ''brilliant.''

He has even argued in a race discrimination case that Alabama should not be subject to a lawsuit under title VII of the Civil Rights Act of 1964. That argument was unanimously rejected by the Eleventh Circuit, because it would have reversed decades of settled Supreme Court law. It shows how far he would go—trying even to limit Federal power to address race discrimination under the 14th amendment, even though combating race discrimination is the amendment's very purpose.

These examples rebut the notion, repeatedly urged by Mr. Pryor's supporters, that Mr. Pryor is simply ''following the law'' or that his views are within the mainstream. Again and again his statements and litigation positions make clear that his agenda to ''make the law'', and again and again his radical views to change decades of Supreme Court jurisprudence are rejected by the Federal courts.

Mr. Pryor even seems to resist the application of Supreme Court decisions with which he disagrees. In 2002, Mr. Pryor authored a friend-of-the-court brief to the Supreme Court arguing that it did not violate the eighth amendment to execute people who are mentally retarded. The Court rejected his argument by a 6 to 3 vote in Atkins v. Virginia. Yet this past May, Mr. Pryor attempted to prevent a prisoner with an IQ of 65—and whom even the prosecution had noted was mentally retarded—from raising a claim under Atkins. The Eleventh Circuit unanimously rejected Mr. Pryor's arguments, and stayed the execution of the Alabama prisoner.

Do you call that mainstream? Judicial mainstream?

Mr. Pryor does not simply advocate these views in public life. He has used his position as Attorney General to advance his own ideolgical agenda. His State was one of only three States to submit an amicus brief in support of Texas in the Lawrence case on gay rights. His restrictive view of the constitutional right of privacy and his argument that States should be allowed to criminalize homosexual activity were rejected by the Supreme Court in its decision last month.

He was the only State attorney general—with 37 on the other side—to submit an amicus brief opposing the remedy in the Violence Against Women Act. He was the only attorney general to argue to the Supreme Court that Congress has no power to make provisions of the Clean Water Act enforceable against the States.

Do we understand now? He was the only State attorney general, with 37 on the other side, to submit an amicus brief opposing the remedy in the Violence Against Women Act; the only attorney general to argue to the Supreme Court that Congress has no power to make provisions of the Clean Water Act enforceable against the State. He had ridiculed the Supreme Court of the United States for granting a temporary stay of execution of a prisoner in a capital case who even the prosecution had noted was mentally retarded. The Eleventh Circuit unanimously rejected his arguments and stayed the execution of the Alabama prisoner, and the proponents of this nominee say he is in the mainstream? The mainstream of thinking?

Mr. Pryor has vigorously opposed gun control laws. He says the victims of violence who sue gun dealers or manufacturers failing to follow the Federal law are ''leftist bounty hunters.''

He filed an amicus brief for the State of Alabama opposing a law limiting possession of firearms.

In this case, a Federal district court judge dismissed an indictment against a man in Texas who had possessed a firearm while under a restraining order for domestic violence, in violation of Federal law. The judge ruled that the law violated the second amendment. Alabama was the only State to file an amicus brief in the Fifth Circuit. The brief broadly argued that the Federal Government's interpretation of the statute was so broad that it constituted a ''sweeping and arbitrary infringement on the second amendment right to keep and bear arms.''

Mr. Pryor's argument went far beyond what the Fifth Circuit or any other court has held. The concern is that here again Mr. Pryor was using the attorney general's office in Alabama to advance his own personal ideological agenda in a Texas case, and that he will continue this mission if his nomination is confirmed.

What he was trying to intervene on was the fact that you have a law that restricts the ability for someone to bear an arm who is under a restraining order for domestic violence. Do we understand this? State law has said people who are under restraining orders for domestic violence should not bear arms. Attorney General Pryor is saying, ''Wait a minute. That violates the second amendment.'' And we are saying that this is in the mainstream of judicial thinking? A State law says that when you have domestic violence and an individual is under a restraining order, that individual can't bear arms. He is trying to override it and you say that is in the mainstream?

Mr. Pryor has ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama is one of only two States in the Nation that uses the electric chair as its sole method of execution. The Court granted review to determine whether the use of the electric chair was cruel and unusual punishment. For Mr. Pryor, however, the Court should not have even paused to consider this eighth amendment question.

Listen to this. He stated that the issue ''should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court.''

He stated that the issue ''should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court'' of the United States.

Talk about respect for the law and respect for the Supreme Court. All of us know that the courts may support our views at times. We may differ with the other courts. We just saw this in recent times when they made a decision on the outcome of an election. Many had concerns about it. It was supported by the American people because of the great respect that we have for the Supreme Court. And he is talking about ''nine octogenarian lawyers who happen to sit on the Supreme Court.''

Mr. Pryor's many inflammatory statements suggest that he lacks the temperament to serve as a judge. He is dismissive of concerns about fairness and racial bias in capital punishment. He has stated: ''make no mistake about it, the death penalty moratorium movement is headed by an activist minority with little concern for what is really going on in our criminal justice system.''

Many of his statements reflect an alarmingly politicized view of the judiciary—hardly appropriate for someone who wants to serve as a Federal judge. In a speech to the Federalist Society, he praised the election of George Bush as the ''last best hope for federalism'' and ended his speech with these words a ''prayer for the next administration: Please God, no more Souters.''

That is obviously a derogatory remark about a very distinguished jurist, Justice Souter.

He was thankful for the Bush v. Gore decision because, as he said, ''I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.''

I hope that his nomination will be rejected.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, is the Senator from New Mexico recognized?

The PRESIDING OFFICER. Yes, the Senator is recognized.

Mr. DOMENICI. Madam President, I conferred with the majority leader, and he is thinking about the situation we are in. I would like to chat for a little bit as one who greatly appreciates the Senate, the committees, and the jobs we all have and the job I have.

While the majority leader is thinking about matters and deciding what to do, I want to talk a little bit about the situation.

First of all, let me say there is no question that the United States of America needs an Energy bill and needs an Energy bill sooner rather than later. We have already passed the time to have an Energy bill. As far as I am concerned, whatever this interference of a judge and a judge's vote and Senators on the other side of the aisle wanting to speak, the way I look at it, I would let them all do it. In fact, I would say to the Democratic Members of that committee, why don't you all speak? I would set up the vote on the judge at the earliest possible time under the rules, and let them speak if we have to stay here all night. Let them all speak. Then we will have the judge out of the way sooner than later. Then we would just say to everybody, fine. One day we were supposed to be debating the Energy bill and we debated the judge, so we will stay here an extra day. I would just say, let's start tomorrow, and after you talk for the next 9 hours, instead of working on the Energy bill, let us go to work and let us do the Energy bill. That might mean instead of Friday we would be here Saturday. We would just substitute one day called Saturday for a day called Wednesday. Wednesday was the day we ought to be working on the Energy bill, but there has been a decision to speak to a very important subject which the other side of the aisle has thought to be very important, and that is their privilege. They think it is important to talk about a judge. I think it is important that we in fact get an Energy bill. I think there is only one way to do both of them. That is to let the Democrats talk as long as they would like. If they want to talk now, or want to talk for the rest of the night, or want to talk right up until the time we are supposed to vote, then sooner or later that vote will be over. That will be one of the jobs we have in front of us.

Then I would turn to the next job we have, and that is the Energy bill. If we don't get to that until tomorrow morning, we will then be on the Energy bill. Then we will decide how much time we want to take on the Energy bill. Then the public will know where we are.

Everything will have been done: Democrats will have gotten to talk all they wanted on a judge and the Republican leader will have brought up the judge and the Senate having voted on the judge—whatever happens, a cloture vote, approval, nonapproval, but the vote will be over, and we will be back on the Energy bill. Then we will have nothing else before us.

Straightforward, looking out to the public of America, looking across the aisle to our friends and saying: You had it your way. Now, are we ready? Are we ready to go and finish the Energy bill the American way? You can't have both of them. You can have one or the other. You can have one at a time but you can't have both at the same time.

So I think it is pretty easy. I don't think it is the only way, though. I think the majority and minority leaders can, in fact, reach an agreement. That is not the business of the Senator from New Mexico but I believe they could reach an agreement.

Let me repeat, if nobody wants to agree, and the Democrats want to talk—and they have told us absolutely they have the right to talk, not about the Energy bill, about a judge. And I am not being critical. There is a judge nominee who they claim they want to talk about. I think they ought to talk about it. I think they ought to talk right up until the time we vote. But sooner or later we will vote on that judge and then we ought to come back to the Energy bill. Then we can tell the public, clear and simple, there is no judge in the way, there is nothing in the way. Here we are, full speed ahead.

We have as many days as we need. We have Friday—well, that would still only be Thursday. We have the rest of Thursday. We have Friday. We have Saturday. Then certainly some people would not want to work on Sunday but then we could come back Monday. If the Democrats think we need 4 more days, we could have 4 more days.

I, frankly, believe, without any doubt, you can finish this Energy bill in a day and a half, and people can have all the time they want on important matters—maximum, 2 but you can finish it in 1½ to 2 days.

So from this Senator's standpoint—I repeat, I do not speak for anyone but myself as the chairman of the Energy Committee and someone who has worked pretty hard to get a bill I think is pretty good but that I would like to take to conference someday with the House and get an Energy bill for the country. This bill does not please everybody but it is pretty good.

I have been pondering it, but I think probably the best thing to do is to make arrangements to do them both, to do the judge and to do the bill. If that is what the other side wants, to take the time that I think belongs to the Energy bill so they can speak, I would say, let them do it. But that time will end. When that time ends, we go to the Energy bill and then there will not be any excuses—that will be it.

Whatever are the amendments—my friend, the whip, has told me there are three or four more on the electricity

section—let's have them. We can do them whenever that time comes that I have just described, one after another, just like we have done. None have passed yet. That is not to say some will not in the future.

Then we will go to the other ones, three of which are important to people but that do not even belong on this bill. And they are important. They are going to take a lot of time. They literally do not belong on this bill.

So I have spent a lot of time so far. I am willing to spend a lot more. I don't think it needs 3 more days of the time of the Senator from New Mexico. I think it needs 2 days. But I can't do that so long as the other side wants to talk about a judge. I can't do both. The public ought to know that. It just can't be done.

Having said that, let me repeat, let's do both. But let's have an understanding that when we are finished with the judge—and the Democrats will have had all the time they needed to talk about the judge; and that is fine; we have the ranking member here; he might want to talk about him—then we will go to the Energy bill, and we will stay here Friday and Saturday and Sunday and Monday and finish the Energy bill.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Nevada.

Mr. REID. Mr. President, as the distinguished Senator from New Mexico said, the public should know. The public should know the following: The last 4 weeks the distinguished majority leader has been saying we are going to complete the Energy bill in 1 week. For 4 weeks, the minority has said: We cannot do that. There is not enough time to do that.

Last year, when we worked our way through this bill, there were 140-some odd amendments. This year, we have had stops and starts on this bill. The majority leader said we have been on it 16 days. Everyone knows that is simply not factual. We have been on it days but these were Fridays and Mondays when nothing was going on here.

Now, the public should know that in addition to having a difficult time finishing this bill in 1 week, the majority leader has made the decision to schedule votes on judges.

The public should know that the vote we took today on Miguel Estrada was the seventh time we have voted on this judge. There has not been a single vote change all seven votes but yet the valuable time of the Senate was taken on this wasteful exercise.

We also voted, for the third time, on Justice Owen from Texas. Votes have not changed on that. Also, another waste of time.

My friend from New Mexico says: Well, let's finish the debate on Pryor and then go to energy. The problem with that is, we have been told there is going to be another cloture motion filed on a judge. There has been no time spent on the floor on her, either, a woman from California by the name of Kuhl. So using the logic of the Senator from New Mexico, then we would take and debate all day Thursday, and some of Friday, prior to the vote on that.

We have not caused the stops and starts on this bill. Not only have we had stops and starts dealing with judges, which have slowed this up immensely, but we also have had thrown in here two trade bills, the Singapore and Chile trade bills. We still have 6 hours to complete on that debate.

The public should know there is not a single Democrat who opposes an Energy bill. We think this Energy bill is imperfect and there should be amendments filed on it. We have not filed a single amendment that has been, in any way, an effort to slow down this bill. There have been meaningful and important debates, and every vote has been extremely close. Had there been not arm-twisting on the other side on the Cantwell amendment and the Feingold amendment—people in the well wanted to vote with us but did not. As we know what happens down here in close votes, they were unable to vote with us.

These are not meaningless amendments. They have been very important amendments. As I have explained on several occasions, we have other amendments that are just as meaningful as these that have been filed.

We have also heard my friend from New Mexico say: We want to do this the American way. I don't know what that means. But that is what this is. We are in the Senate and we are doing things the American way, as established by the U.S. Constitution. That is how we are going to do things.

We did not make the decision to have the parliamentary posture as it is. That has been made by the majority leader. He has a right to do that, but he also has the obligation to know that the stops and starts on this Energy bill has made it virtually impossible to pass this bill.

Now, to have threats made—and that is what they are: You are going to be here Friday afternoon; you are going to be here Saturday, Sunday, Monday, Tuesday—well, that is the way it is. But always remember, any inconvenience that is caused to the Democrats will be caused to the Republicans also. Remember, there are two more of them than there are of us, so they will have a little extra inconvenience.

But this Senator and all 48 other Senators who are here in the minority are willing to work to complete whatever work needs to be done. But we are not going to be rushed into voting for a judge such as the man from Alabama who has been hustled out of the Committee of the Judiciary without proper debate in the committee itself. We are going to have proper debate in the Senate. We are going to have the American people know because the public should know. We are going to do it the American way.

We are going to hear the ranking member of the committee, who, by the way, has been responsible for our approving, during this administration, 140 Federal judges.

We have turned down two. The American public should know that. That is the American way. One-hundred and forty to two isn't that bad. Anybody who has a basic knowledge of math understands those are pretty good odds.

There is also a complaint that the distinguished ranking member has requested votes on some of these judges. Well, yes, and we have six judges now who could have been approved during the 4 hours we are going to be wasting on these cloture votes. In fact, we probably could have done all of them in the 4 hours set aside. Of course we could have.

The plaintive cries create no pity on our side. We are here ready to work on the Energy bill. If they don't want Senators from the Judiciary Committee and others speaking about Pryor, then let's not have a cloture vote tomorrow. Let's not have a cloture vote on Kuhl on Friday. We can spend more time on the Energy bill.

Until the majority leader understands that he is his own worst enemy, we are going to continue what we are doing to protect the rights of the American people because the public should know.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I must say I completely agree with the senior Senator from Nevada on this. The senior Senator from New Mexico, who was in the Chamber, expressed concern about time being taken talking about William Pryor's nomination. We are not the ones who scheduled William Pryor's nomination in the middle of the Energy bill.

The distinguished senior Senator from Utah, chairman of the Senate Judiciary Committee, is in the Chamber. He knows the concerns expressed by members of the committee that this nomination was voted out of committee before investigations underway involving Mr. Pryor were completed.

It is passingly strange that when we say that after the nomination has been moved prematurely out of the Senate Judiciary Committee with pending questions, very serious questions involving the conduct of that nominee unresolved, but it gets sort of rocketed onto the floor. Then we are asked to lie down and just let it go through without even saying why we object.

First, the rules of the Senate Judiciary Committee itself were violated. Rule 4 was violated. The matter is still coming up. The distinguished majority leader and the distinguished Democratic leader had a conversation in which the distinguished majority leader assured us that this would never happen again. Within a few weeks of that assurance, it happens again, an assurance that no nomination of this nature would come up if it was sent out

in violation of rule 4 of the Senate Judiciary Committee. It was. The nomination is up. And we don't ask questions about it?

Then we hear some on the other side say: Our judges are being blocked. Well, it is true; 2 out of 140 have been. But at the same time, they want to quietly voice vote all these other judges through so that nobody will notice that we are passing judges. One of the reasons we have asked for rollcall votes on a number of them is to show how easy it is to pass a judge where there is a consensus.

In those rare instances where people have actually been consulted about a judge and where a judge has been nominated who is not going to be an ideological arm of either political party but, rather, be an independent judge, they go through easily.

In this case, the Republican leadership—not the Democratic leadership, the Republican leadership—filed a cloture motion on the nomination of William Pryor to the Eleventh Circuit. So we are going to have this premature debate.

I hope there is one aspect on which we can get closure in the Senate. In connection with this nomination, supporters of the administration have leveled the unfounded charges that Democratic Senators are anti-Catholic. This charge is despicable. I have waited patiently for more than 2 years for Republican Senators to disavow such charges. So far, only one has, the distinguished Presiding Officer. This is a despicable, slanderous charge. It is one calculated to throw us back into a time that maybe some in this Chamber may not remember. Some of us have parents who do remember when anti-Catholic bias ran rampant in this country.

It is outrageous, of course, that Republicans will not knock down these slanderous charges of anti-Catholicism and allow them to go forward. This slander and the ads recently run by a group headed by the President's father's former White House counsel and a group whose funding includes money raised by Republican Senators and the President's family are personally offensive. They have no place in this debate or anywhere else.

For a charge of anti-Catholicism to be leveled against any Member of this Chamber, Republican or Democratic, is wrong. But for those who stay silent and allow it to go forward, who take part in it, the only way for a lie to get traction is for people to remain silent. And those who could stop this lie in a hurry remain silent.

I challenged the Republican Senators on the Judiciary Committee who are so fond of castigating special interest groups and condemning every critical statement of a Republican nominee as being somehow a partisan sneer, to condemn this ad campaign and the injunction of religion into these matters. Only the junior Senator from Georgia now presiding responded to that challenge. Other Republican members of the Judiciary Committee and of the Senate have either stood mute in the face of these obnoxious and disgusting and scurrilous charges or, worse, they have fed the flames.

Today, Republican Senators have another chance to do what they have not yet done and what this administration has not yet done—disavow this campaign of division and those who have played wedge politics with religion. I hope the Republican leadership of the Senate and of the Judiciary Committee will finally disavow the contention that any Senator is being motivated in any way by religious bigotry, just as I and others on this side of the aisle have defended members of the Republican side of the aisle when they have been attacked on their religion. We find it so painful that not only do they remain silent when people on this side of the aisle are attacked on their religion but in some instances have even continued the attack in statements they have made outside this Chamber.

When we began debate on the nomination of Miguel Estrada in February, I made a similar request with respect to the charges that Senators were being anti-Hispanic. The other side never withdrew that ridiculous charge. Instead, the special interest groups and others trying to intimidate the Senate into voting on that nomination broadened the attack to include Hispanic members of the Congressional Hispanic Caucus, MALDEF, the Puerto Rican Legal Defense and Education Fund, past presidents of the Hispanic National Bar Association, and many other Hispanic and civil rights organizations that opposed the Estrada nomination. It was so bad that one Hispanic organization that supported Miguel Estrada issued a statement that the charge was wrong, that they certainly didn't believe it applied to any Member of the Senate, and urged the Republicans to stop it.

They didn't, but they were urged by other Hispanic groups to stop it. The demagoguery, divisive and partisan politics being so cynically used by supporters of the President's most extreme judicial nominees needs to stop. There are at least five judicial nominations on the Executive Calendar on which we can join as Democrats and Republicans. I would be willing to bet that they would be confirmed by an overwhelming vote.

I remember when we had a circuit court of appeals judge nominated by President Bush. For a month, the Democrats tried to get a vote on that nominee. For a month, one Republican had an anonymous hold and refused a vote to go forward. There are people we could vote on. Why don't they? We took a month to get the Republicans to release the anonymous hold on Judge Edward Prado, who was nominated by President Bush. Interestingly enough, I finally found out why. They didn't want a vote. They wanted to attack us for not voting on him, even though we were the ones asking to vote on him. It is Alice in Wonderland to the tenth power.

Now, the assistant minority leader suggested going to these matters and making progress. I have suggested scheduling rollcall votes on these nominees and making further bipartisan progress. Instead, we waste time on cloture motion after cloture motion after another cloture motion in connection with the most controversial of this President's nominees. Now I find out why. I am told by members of the press that the Republicans said this was supposed to be our issue this week. We are not getting appropriations bills done, we are not going to finish the Energy bill, or do anything else, so we are going to tie up the Senate with a number of cloture votes. Then they all went out with their talking points with members of the press to tell them how terrible it was that we were having these votes, which they scheduled.

Mr. DORGAN. Will the Senator from Vermont yield for a question?

Mr. LEAHY. Yes.

Mr. DORGAN. I listened to some of the complaints on the floor recently while I was in my office. They were concerned about not moving ahead on energy. I guess the obvious question is—we didn't bring up the judge; we are not requiring a vote on the judge; we are not requiring a vote on the trade agreements; and there is no requirement to vote on the trade agreements this week. There is no requirement to vote on this judge this week. So isn't the proposition that those who are scheduling this place, who insist on a vote on a judge, insist on bringing up trade agreements in the middle of the discussion on energy, isn't that what is causing the delay?

Mr. LEAHY. Mr. President, the Senator is absolutely right. The distinguished assistant Democratic leader pointed out just a short while ago that we have had a number of votes on the Energy bill, which were very close votes, which could have gone either way. We had a good debate going and we were actually voting. Now, instead we spend more time in quorum calls and bringing up judicial votes that are not going anywhere.

I must say to my friend from North Dakota, as ranking member of the Judiciary Committee, if we would have taken the time that has been wasted on things not going anywhere, if we had taken time to vote through some of the judges, where I believe we could get consensus of both Democrats and Republicans, and vote and confirm them and let them go to the bench, that would be a better way. We spent a whole month, as I mentioned, trying to get the Republicans to allow a vote on Judge Edward Prado for a circuit court of appeals position. He had been nominated by President Bush and was strongly supported by President Bush. For a month, they blocked it from going to a vote. We found out afterward it was because they went to the same members of the press they have

gone to this week and they said: This is terrible. The Democrats aren't allowing us to vote.

Democrats, time after time, came on the Senate floor and said we can have unanimous consent to go to a vote, and they objected.

Mr. DORGAN. Mr. President, further inquiring of the Senator from Vermont, is it the case, then, that there are judge candidates that could be brought to the Senate floor without any controversy at all, which would require very little time? Those are not the ones brought to the floor. Very controversial nominations are brought to the Senate floor, and complaints arise because someone wants to debate it. Isn't it the point that we didn't bring this judgeship to the floor for a cloture vote?

Mr. LEAHY. No. In fact, I say to my friend that the one time we did try to bring one of President Bush's circuit court nominees to the floor and ask to have him considered, for a month we were not allowed to because the Republicans objected. I have not done a whip check, but I am willing to bet that if we brought them to a vote, and they are on the calendar now, they would get confirmed. Even in the time we have had quorum calls and discussions on this today, we could have brought them up and had a series of 10-minute rollcall votes. And I am willing to bet we would have passed them all.

Mr. DORGAN. The Senator indicated we were dealing with very important issues today. Indeed we were. I mention the Cantwell amendment, which lost by two votes. It was a very significant amendment which I think, in the rear view mirror of public policy, will turn out to be one of the most important amendments turned down by the Senate dealing with energy.

We know what is happening on the west coast. Firms bilked people out of billions of dollars. There is substantial criminal investigation still ongoing and the proposition today on the Energy bill was important: Will there be adequate protections for consumers, and will we do something about the scandals that occurred on the west coast and stand up and support the interests of consumers and prevent manipulation of energy markets? That amendment failed by two votes. There was a significant debate, a big amendment. These are big, important issues.

The question is, Why are we not continuing to work on the Energy bill? What interrupted it? Have we done that or has someone else brought something else to the floor of the Senate?

Mr. LEAHY. Mr. President, I answer my friend from North Dakota that we have been willing to move forward on amendments on the Energy bill. We are not the ones who brought up the extraneous cloture votes which are not going anywhere. Maybe some want to get off the Energy bill. I note that the distinguished Senator mentioned Senator CANTWELL's amendment. I was very proud to support that amendment. It was excellent and, as the Senator said, it would protect the consumers.

It was interesting because, at one point, she had the amendment won, and you heard the snap, crackle, and pop, not of Rice Crispies but the arms being twisted and snapped as votes were being changed. Most of the power company lobbyists were saying to the leadership on the other side that you cannot allow that to go through, and votes were being changed. It came within two votes.

I agree with the Senator from North Dakota that people are going to look in the rear view mirror and say Senator CANTWELL was right, and that should have been allowed to go through.

Mr. DORGAN. If the Senator will yield further, and I am sorry to continue to inquire, at this point, is there a cloture vote that is now scheduled on Mr. Pryor? Is there a vote scheduled and, if so, when is it scheduled?

Mr. LEAHY. Mr. President, it is scheduled for tomorrow under the normal circumstances, unless there has been an agreement entered into otherwise. That would be an hour after we come into session. Unless the established quorum is waived, we could go to a vote.

Mr. DORGAN. Mr. President, I inquire further, if a cloture motion has been filed and it ripens tomorrow and we presumably would have a cloture vote on this nomination tomorrow, for those tonight who are concerned about not moving ahead on energy, we could resolve that by vitiating the cloture motion vote tomorrow.

I was sitting in my office listening to those complaining that we are not moving ahead on energy, understanding it was not us who brought this judgeship forward. We did not put forward the proposal that we have to do two free-trade agreements this week.

It seems to me, at least with respect to the judgeships, perhaps what ought to be done is unanimous consent ought to be entertained to vitiate the cloture vote tomorrow on this judge and move on. After all, there is no reason that we have to vote on this judge tomorrow. This nomination has not been waiting a great length of time. It can be done in September. For those who are worried about moving ahead on energy—and we should—it seems to me what we probably ought to do is join together and vitiate this cloture vote, move on, and continue with the Energy bill tonight. Does the Senator think that is an appropriate course?

Mr. LEAHY. Mr. President, I tell my friend from North Dakota, not only would it be an appropriate course because cloture is not going to be invoked primarily because, for one major reason because of his qualifications, but also because the rules of the Judiciary Committee were not followed in having this nomination go out.

We could very well at that time, if we want to get judges through, not have this cloture vote, which is not going to go anywhere. We have James Cohn, of Florida. During this time we could have voted on him to be a judge. We could have voted on Frank Montalvo, of Texas. These are nominees I would support and I think a majority of us would support. Xavier Rodriguez, of Texas, could have been voted on. The Republicans have made no effort to bring them up, even though we told them they could. H. Brent McKnight, of North Carolina—these are people we would allow to being brought up. We would allow the home State Senators to take a few minutes to speak about them. In fact, they could bring them all up and do them in a stack of 10-minute rollcall votes. They would have gone through in the amount of time of some our quorum calls today.

Mr. DORGAN. Mr. President, if I may address the Senator from Vermont with one final inquiry, it seems to me if the issue in the Senate is we have limited time and we have a substantial amount of work to do on energy—I was at the White House yesterday. President Bush called a number of us down to the White House to talk about the urgent need to pass this Energy bill. If that is, in fact, the case—and I believe it is and the majority leader has said it is—in order to get back on this Energy bill, it seems to me what we should do—and I encourage the majority leader to do this—is vitiate the cloture vote on the judgeship. We do not need to do it this week. We all know we do not. He can decide we do not have to bring up the two free-trade agreements this week. There is nothing urgent about those agreements. That need not be done this week.

If the President is correct—and I believe he is—and if the majority leader is correct—and I believe he is—that this Energy bill ought to move, it is urgent public business, then let's move back to the Energy bill and do it now. I encourage the majority leader to make that decision.

Mr. SANTORUM. Will the Senator from Vermont yield?

Mr. DORGAN. The Senator from Vermont has the time. I thank the Senator from Vermont for yielding to me. I, again, say to the majority leader, I do not want to hear people complaining about the fact that we are not on the Energy bill. We are not making progress on the bill because the majority leader and others said we have to move to the judgeships and then move to the trade agreements.

The fact is, they are the ones taking us off the Energy bill, not us. We ought to offer the next amendment right now on the Energy bill and vitiate the cloture vote tomorrow morning on the judgeship. That will solve the problem.

The PRESIDING OFFICER. The Senator may yield for questions but not for comments. The Senator from Vermont has the floor.

Mr. LEAHY. Mr. President, the distinguished Senator from Pennsylvania has asked if I will yield for a question. I will yield without losing my right to

the floor or my right to reclaim the floor within 1 minute.

Mr. SANTORUM. Mr. President, I ask if the Senator from North Dakota and the Senator from Vermont will agree to a unanimous consent request that we have a final vote on the Energy bill by noon on Friday and in exchange for that, we will vitiate the cloture votes on the two judges that are in the queue right now. I think we can probably get unanimous consent on that on our side fairly quickly.

If the Senator from North Dakota agrees with that, we will be happy to move forward.

Mr. LEAHY. Mr. President, I have the floor. I am not on the Energy Committee.

Mr. SANTORUM. I think that is what the Senator from North Dakota suggested.

Mr. DORGAN. Mr. President, if the——

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. LEAHY. Mr. President, let me respond this way. I have been in the Senate for 29 years. I love the Senate. I love following our normal course of doing business. The Senator from Pennsylvania has raised an appropriate question. I suggest that is a question that should be directed to the Republican leader and the Democratic leader and the chairman and the ranking member of the committee, which is the normal course of doing business, the way we have always done it. Naturally, I would be guided by the direction of the Republican and Democratic leaders, not only in the Senate but in the committee.

Obviously, I am not in a position to speak for the Republican or Democratic leaders or the Republican chairman or Democratic ranking member on this issue. The Senator from Pennsylvania is perfectly within his rights in raising the issue, and I hope that might prompt a discussion with them.

Mr. DORGAN. Mr. President, I ask the Senator to yield for one more question.

Mr. LEAHY. I yield.

Mr. DORGAN. Mr. President, I ask the Senator, would it make the most sense to have a final vote on the Energy bill when we have finished our work on the Energy bill? And wouldn't that best be accommodated by not going off and on to come up with judgeships and trade agreements? Wouldn't the best approach to reaching a final vote on the Energy bill be to stop bringing to the floor of the Senate other business, business that need not be done now?

Mr. LEAHY. Mr. President, I will answer this way: We have diverted some 6 to 10 hours off the Energy bill now. I see my friend, the senior Senator from Nevada. I know over the years he has worked very closely with his counterpart on the Republican side and usually tried to work out a finite list of amendments to the Energy bill. Again, based on my experience, my years in the Senate—almost three decades—I find usually if we stay on a bill that is your important bill, if you do not keep going off it for the trade agreements about which the Senator from North Dakota spoke, or these various cloture motions, if we keep going off these bills, then nobody feels the pressure to work things out.

On the other hand, if we just stay on the bill and people bring up amendments, we will find which ones are close amendments and actually have a chance of being adopted and which ones are not going to be adopted. Usually the Republican and Democratic leadership get together and whittle down the finite number. Then, as the Senator from Pennsylvania suggested, we are usually in the position to find a time for a final vote.

My suggestion is that we use what he has suggested but stay on the Energy bill, work toward a finite list of amendments. We will then know when they are going to take place and how much time they are going to take. And then we will know when we are going to have final passage. We can do that and then go back to anything else they want.

If we are going to keep going back to these judges—as I said, we so far stopped two of President Bush's judges and confirmed 140, unlike the 60 of President Clinton's judges who were stopped by the Republicans, usually because someone objected anonymously. We have done it out here on the floor where we stood up on the nomination.

I am one Senator who actually takes seriously the role of the Senate. There are only 100 of us, and we are given the privilege to represent 270 million Americans. But we also have a very unique place. There is no other parliamentary body in the world quite like the Senate. We have this unique spot where we have checks and balances, especially on confirmations. The Constitution does not say advise and rubberstamp; it says advise and consent.

Nobody should underestimate our commitment to the independence of the Federal judiciary and to our constitutional duty to advise and consent on these lifetime appointments. Nobody should underestimate our commitment to the protection of the rights of all Americans—Republicans and Democrats, Independents—in every part of this Nation.

The Senate was intended to serve as a check and balance in our unique system of Government. We fail our oaths of office as Senators if we allow the Federal judiciary to be politicized, if we cast votes that would remove their independence.

Mr. President, I ask unanimous consent that it be in order to yield to the distinguished senior Senator from California.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. LEAHY. Mr. President, then I will continue my speech.

Mr. HATCH. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Objection has been heard.

Does the Senator from Pennsylvania withdraw his objection?

Mr. SANTORUM. No, I do not.

Mr. LEAHY. Mr. President, then I would——

Mr. HATCH. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. HATCH. Could I ask how much time the distinguished Senator from California desires?

Mrs. FEINSTEIN. I do not think more than 10 or 12 minutes.

Mr. HATCH. My personal belief is we ought to let her go ahead, and I would encourage my colleague to do that.

Mr. LEAHY. Mr. President, I would renew my——

Mr. HATCH. I ask unanimous consent that we——

Mr. LEAHY. I have the floor. I would renew my request.

Mr. HATCH. Would the Senator add that I be given time?

Mr. LEAHY. Along with the distinguished senior Senator from Utah, I renew my request that I be allowed to yield now to the distinguished senior Senator from California.

Mr. HATCH. I add to that, when the distinguished Senator from California is finished I would be granted the floor for my remarks.

Mr. LEAHY. For how long?

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

Mr. HATCH. I have no idea.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. I object.

The PRESIDING OFFICER. The Senator from Illinois objects.

Mr. DURBIN. I reserve the right to object, Mr. President. I inquire of the Senator from Utah how much time he would want to be recognized.

Mr. HATCH. I do not have an exact time, but I would hope not too long.

Mr. DURBIN. Well, if the Senator from Utah would give me a fair approximation so I can request to follow him in speaking order, that is all I am asking for.

Mr. HATCH. I would estimate up to an hour.

Mr. REID. Objection.

The PRESIDING OFFICER. The objection is heard.

Mr. HATCH. Then I will ask for the floor when the distinguished Senator from Vermont ends his remarks.

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. REID. Will the Senator from Vermont yield for a question?

Mr. LEAHY. I yield to the distinguished senior Senator from Nevada for a question.

Mr. REID. I say to the Senator from Vermont, it is my understanding that the Senator has approximately 15 or 20 minutes on his speech. What the Senator wanted to do is yield to the Senator from California for 10 or 12 minutes, I think she said. Then it is my understanding that the request was the Senator from Utah be recognized for up to an hour, and then following that I would like to modify the request that the Senator from Illinois be recognized for up to 45 minutes

Mr. SANTORUM. Mr. President, I object.

The PRESIDING OFFICER. The Senator from Nevada cannot propound a unanimous consent request. He does not have the floor. The Senator from Vermont does.

Mr. LEAHY. Mr. President, on behalf of both myself and the Senator from Utah, Mr. HATCH, I ask unanimous consent that the distinguished Senator from California be recognized for no more than 15 minutes; the distinguished Senator from Utah be recognized for up to an hour; and then the distinguished senior Senator from Illinois be recognized for up to 40 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. I object.

The PRESIDING OFFICER. The objection is heard.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. LEAHY. Mr. President, I tried to accommodate the Senator from Utah.

Mr. HATCH. Who is trying to accommodate the Senator from Vermont.

Mr. LEAHY. Who is trying to accommodate the Senator from Vermont. I will try to do that even though the Senator from Utah wants to speak longer than I thought. But he is, after all, the chairman of the committee. I was willing to stop my speech at this point to accommodate him. We have probably taken longer in making these unanimous consent requests.

Mr. HATCH. I have a suggestion. Why does not the distinguished Senator end his speech and we will go to the distinguished Senator from California before me, and then I will try to be less than an hour?

Mr. LEAHY. Mr. President, I ask that that be the order; that I complete my speech, yield to the Senator from California, and then the Senator from Utah be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I have spoken to the distinguished junior Senator from Pennsylvania. He said the reason he objected is because he felt it was an unequal distribution of time. If that is the case, we want to make sure there is an equal distribution of time. Through the chair, to the Senator from Utah, I am wondering who wants to speak after the Senator from Utah. I am trying to figure out how to balance this out fairly.

We recognize that Senator KENNEDY spoke for 20 minutes or so.

Mr. HATCH. He spoke for half an hour.

Mr. LEAHY. Mr. President, I suggest to my colleagues that we do this, as we have offered before: We allow the Senator from California to speak, and then the Senator from Utah, and then, as we have done before, we go back and forth.

Mr. REID. I do not think we should go back and forth. Whoever gets recognized should speak after the Senator from Utah.

Mr. SANTORUM. That is fine.

Mr. LEAHY. I ask unanimous consent that it be in order to recognize the Senator from California, and then be in order to recognize the Senator from Utah, Mr. HATCH.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, as I understand the unanimous consent request, we are now moving forward to debate this judgeship so that we can have a cloture vote in the morning, much to the angst of many who believe we should be on the electricity title of the Energy bill. So I ask when is it in order for us to ask unanimous consent to vitiate the cloture vote in the morning so we might do what every one of us in this Chamber knows we should be doing, and that is be back on the energy title to try to finish the Energy bill?

I ask the Presiding Officer when might it be in order for me to seek unanimous consent to vitiate the cloture vote tomorrow morning so we can get back to the Energy bill now?

The PRESIDING OFFICER. The Senator can make a unanimous consent at any time he gains the floor in his own right.

Mr. DORGAN. Would that include the time during a reservation of another unanimous consent request?

The PRESIDING OFFICER. No, it would not.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I would renew any request.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I say for the purpose of edification of the Senator from North Dakota, the two leaders have met and talked and our leader went to the Democratic leader and actually suggested to do just that, vitiate in exchange for a time certain this week to finish this bill, which is what I know the Senator from North Dakota was looking to do.

Mr. DORGAN. No, that is not the case.

Mr. SANTORUM. As a result, that was not accomplished. The Senator from South Dakota said that was not acceptable, so as a result we are now stuck on what seemingly some Members of this Chamber would like to talk about.

Mr. DORGAN. Mr. President, continuing to reserve the right to object.

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. LEAHY. I renew my request.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I continue my reservation to object. Let me just say that I speak fairly well for myself on this floor, and I have never suggested that in exchange for anything we have a time certain. What I suggested is that if we want to finish this Energy bill, we be able to offer the amendments on the title and debate the amendments. We are not going to get to that point if we keep interrupting the Energy bill with judges and trade agreements.

If we believe this is urgent—and the President says it is, I believe it is, others believe it is—let's get back to it this moment. Let's vitiate the cloture vote tomorrow on the judgeship. Let's hold over the free-trade agreements until September and decide this is important, as we have always said it was, and move to finish this Energy bill. I am not talking about a time certain. The time for finishing it is when we finish the amendments, have debate on the amendments, and have votes on the amendments.

We can do that if I ask unanimous consent to vitiate the cloture vote tomorrow, but I guess I cannot do that under a reservation of objection.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the Senator from Vermont?

Mr. LEAHY. Mr. President, I will withhold my request for the moment without losing my right to the floor so that the Senator from Utah might make a point.

The PRESIDING OFFICER. Without objection.

Mr. HATCH. Reserving my right to object, Mr. President, it is not unusual to have multiple matters heard by the Senate. It is certainly not unusual to have cloture votes on judges, especially under the current situation. I would be happy to quit debating General Pryor tonight, even though there has been probably close to an hour of the Senate's time utilized on this debate, and just go to the cloture vote tomorrow, quit playing around with the Energy bill that we know is being slow-walked, and try to finish the Energy bill before the end of this week.

There is no excuse for not having a cloture vote on Judge Pryor or Judge Kuhl on Friday.

Mr. LEAHY. Mr. President, regaining my right to the floor, I probably could have completed my speech during this

time, but I was trying to save everybody some time. I was trying to accommodate the distinguished senior Senator from Utah, who is the chairman. I think everybody has agreed now to the request I have made.

I would renew my request that the distinguished Senator from California be recognized, the ball then goes back to the distinguished Senator from Utah.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I am prompted to do this by the statement of the chairman of the Judiciary Committee.

It is outrageous you should suggest you would schedule the judge for tomorrow on a cloture vote and not provide time for debate, which is the issue that is at stake here. We need the debate on the judge, and then you say, well, you are interfering with the progress of the Energy bill.

Who was it who scheduled the judge for tomorrow? That is where the intrusion came in terms of the process of dealing with the Energy bill.

Mr. HATCH. People have a right to schedule the judge.

Mr. SARBANES. And at the same time assert that you have to pass the Energy bill.

Mr. HATCH. This is the first time we have ever——

The PRESIDING OFFICER. The Senator from Vermont has the floor. Is there an objection to the unanimous consent?

Mr. DORGAN. I object.

The PRESIDING OFFICER (Mr. COLEMAN). The objection is heard.

Mr. LEAHY. Well, Mr. President, I know everyone stands riveted to hear the rest of my speech. I was trying to complete the speech so the Senator from California could be recognized.

Mr. President, sometimes after all this work, the Senate actually does work. Those who are watching someday will explain what exactly has happened.

To continue, the Senate has already confirmed 140 of this President's judicial nominees, including 27 circuit court nominees. We could have confirmed at least five more this week if the Republican leadership would have worked with us to schedule votes on them. That stands in sharp contrast to the treatment of President Clinton's nominees by a Republican-controlled Senate from 1995 through 2001, when judicial vacancies on the Federal courts were more than doubling from 16 to 33.

Opposition to Mr. PRYOR's nomination is shared by a wide spectrum of objective observers. Mr. PRYOR's record is so out of the mainstream that, even before last month's hearing, a number of editorial boards and others weighed in with significant opposition.

Last April, even the Washington Post, which has been exceedingly generous to the Administration's efforts to pack the courts, termed Mr. PRYOR ''unfit''. Both the Tuscaloosa News and the Hunstville Times wrote in early May against the nomination. Other editorial boards across the country spoke out, including the San Jose Mercury News and the Pittsburgh Post-Gazette. Since the hearing, that chorus of opposition has only grown and now includes the New York Times, the Charleston Gazette, the Arizona Daily Star and the Los Angeles Times. I ask unanimous consent to print the full package of these editorials and op-eds in the RECORD.

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

[From the Washington Post, April 11, 2003]

UNFIT TO JUDGE

President Bush must have worked hard to dream up an escalation of the judicial nomination wars as dramatic as his decision this week to nominate Alabama Attorney General Bill Pryor to the U.S. Court of Appeals for the 11th Circuit. A protege of Alabama Republican Sen. Jeff Sessions, Mr. Pryor is a parody of what Democrats imagine Mr. Bush to be plotting for the federal courts. We have argued strongly in favor of several Mr. Bush's nominees—and urged fair and swift consideration of all. And we have criticized Democratic attacks on nominees of substance and quality. But we have also urged Mr. Bush to look for common ground on judicial nominations, to address legitimate Democratic grievances and to seek nominees of such stature as defies political objection. The Pryor nomination shows that Mr. Bush has other ideas.

Mr. Pryor is probably best known as a zealous advocate of relaxing the wall between church and state. He teamed up with one of Pat Robertson's organizations in a court effort to defend student-led prayer in public schools, and he has vocally defended Alabama's chief justice, who has insisted on displaying the Ten Commandments in state court facilities. But his career is broader. He has urged the repeal of a key section of the Voting Rights Act, which he regards as ''an affront to federalism and an expensive burden.'' He has also called Roe v. Wade ''the worst abomination of constitutional law in our history.'' Whatever one thinks of Roe, it is offensive to rank it among the court's most notorious cases, which include Dred Scott and Plessy v. Ferguson, after all.

Mr. Pryor's speeches display a disturbingly politicized view of the role of courts. He has suggested that impeachment is an appropriate remedy for judges who ''repeatedly and recklessly . . . overturn popular will and . . . rewrite constitutional law.'' And he talks publicly about judging in the vulgarly political terms of the current judicial culture war. He concluded one speech, for example, with the following prayer: ''Please, God, no more Souters''—a reference to the betrayal many conservatives feel at the honorable career of Supreme Court Justice David H. Souter.

Mr. Pryor has bipartisan support in Alabama, and he worked to repeal the provisions in that state's constitution that forbade interracial marriage. Bush this is not a nomination the White House can sell as above politics. Mr. Bush cannot at once ask for apolitical consideration of his nominees and put forth nominees who, in word and deed, turn federal courts into political battlegrounds. If he sends the Senate nominees such as Mr. Pryor, he cannot complain too loudly when his nominees receive the most researching scrutiny.

[From the Tuscaloosanews.com, May 4, 2003]

PRYOR'S OPINION GOES BEYOND MAINSTREAM

Attorney General Bill Pryor's opinion that lumps homosexuality in with abusive crimes such as child pornography, bestiality, incest and pedophilia puts him well within the camp of recent nominees to the federal bench but well outside the mainstream of American life.

Pryor was nominated by President Bush to a seat on the U.S. Court of Appeals for the 11th Circuit, which has jurisdiction over Alabama, Georgia and Florida. A legal argument Pryor wrote earlier this year, which just came to light last week, parallels comments by Sen. Rick Santorum, that landed the Pennsylvania Republican in hot water recently.

The amicus brief, penned by Pryor and signed by attorneys for South Carolina and Utah, declared that states' support for the Texas sodomy law in the Supreme Court case of Lawrence vs. Texas, which the court is expected to decide in June or July. Pryor argues the Texas law should be upheld, otherwise constitutional protections ''must logically extend to activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia (if the child should credibly claim to be 'willing').''

Hardly so.

It is a long step from sanctioning, or even tolerating, consensual private activity between two adults to permitting abusive crimes such as pedophilia. The law is perfectly capable of drawing such distinctions in theory and in practice.

We have cautiously supported Pryor's nomination, while taking issue with a number of his controversial positions. These include his defense of state Supreme Court Chief Justice Roy Moore's decision to display the Ten Commandments in the state Judicial Building, his opposition to multistate lawsuits against tobacco companies and his defense of utility companies in upgrading their coal-fired power plants without adding new pollution control devices.

Several of Bush's nominees for federal bench hold extreme anti-gay views. Timony Tymkovich, confirmed to an appeals court last month, has compared homosexuality to cockfighting, bestiality, prostitution and suicide.

Pryor's confirmation hearings have not yet been set. The Judicial Committee will certainly want an explanation of his incendiary comments, which unfortunately are typical of the nominees they will be asked to consider.

———

[From the Huntsville Times, May 4, 2003]

PRYOR'S PREACHING

Churches promote faith; courtrooms promote justice.

Attorney General Bill Pryor usually has been what few Alabama politicians seem to know how to be: principled. Though unabashedly a conservative Republican, Pryor has usually been more nonpartisan than partisan.

More than once, he has ignored the prevailing political winds to do what he thought was right. Trying to reform the state's sentencing system is a prime example. One that he thought was right again. But this time Pryor has gotten it wrong.

In a ''friend of the court'' brief filed almost three months ago regarding the Texas sodomy case before the U.S. Supreme Court, Pryor compared homosexual acts to ''prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia.''

This is the same case, of course, the Pennsylvania Sen. Rick Santorum, another conservative Republican, made similarly troubling remarks about.

The problem here is neither that Pryor has a certain point of view that others may not share, nor that he expressed it. In the United States, we all have a right to think and speak freely.

The problem is that as the attorney general of Alabama—and President Bush's nominee to the 11th Circuit Court of Appeals—Pryor did not separate his personal moral views from his public role as a promoter of justice.

Bill Pryor has championed causes that many Republicans and not a few Democrats would probably have walked away from: such as the removal of the interracial marriage ban from the state constitution and the recruitment of mentors for underprivileged children, to mention a few.

Alabama has benefited from having him as attorney general, and would probably benefit if he decided to seek an even higher elected office one day.

Perhaps the nation would too, but not if Pryor plans to use a judicial appointment as an opportunity to give his moral points of view the heft of the law's brief seems to be a part of a trend to infuse public policy and the law with morality of an abashedly religious strain.

Until God—or whoever or whatever it is you do or do not worship—decides to clarify the myriad matters of faith that have caused us to separate into different churches, temples, mosques, sects, and beliefs, it would be best for those who believe to enjoy their beliefs in a way that allows others to enjoy theirs—or to enjoy not having any beliefs at all.

Churches are supposed to promote faith, and courtrooms, justice. If Pryor is confirmed to the 11th Circuit, he would do well to honor this distinction.

[From the San Jose Mercury News, May 21, 2003]

COUP IN THE COURTS

President Bush has treated judicial nominations like tax cuts: Declare, with a straight face, that the extreme is reasonable and that any opponent is obstructionist.

In the case of judgeships, that means nominating one conservative ideologue after another, knowing that Democrats in a Republican Senate have neither the will nor a way to challenge and defeat most of them.

Instead, the Democrats have picked their shots—and they should continue to do that.

Contrary to his protestations, Bush has had tremendous success. In his first 28 months of office, the Senate has approved 121 of his nominations—better than President Clinton averaged over his administration. Bush has named one out of seven active federal judgeships.

What's at stake is whether Bush will be able to stuff the federal courts with judges narrow in their view of minority and women's rights, staunch in opposition to abortion, and intent on overturning decisions that have been long accepted by the courts and the public.

Individuals like James Leon Holmes, nominated to a federal court in Arkansas, who has written that the role of a woman ''is to place herself under the authority of the man.'' And Alabama Attorney General Bill Pryor, who characterized Roe v. Wade, the decision establishing a right to an abortion, as ''the worst abomination of constitutional law in our history.''

The latest troubling nomination is that of Los Angeles Superior Court Judge Carolyn Kuhl to the 9th Circuit Court of Appeals. That court is the ultimate authority, save for the U.S. Supreme Court, for a huge swath of the West, including California.

As an eager young lawyer in the Reagan administration, Kuhl fought the IRS to retain a tax-exempt status for Bob Jones University despite its record of religious and racial discrimination. The Supreme Court later overturned that decision 8–1. As a deputy attorney general, she co-wrote a brief calling on the Supreme Court to overturn Roe. v. Wade. Three years ago, she dismissed the suit of a breast-cancer patient who claimed a violation of privacy after a drug-company salesman watched her examination without her permission. That appallingly insensitive ruling was also overturned.

Kuhl has plenty of supporters among lawyers, including Democrats, who say she's a good trial judge. If so, that's where she should stay—not placed on an appeals court where decisions are binding an all lower courts.

Both home state senators, Barbara Boxer and Dianne Feinstein, oppose Kuhl's appointment; traditionally, that's been enough to sink a nomination. But Senate Republicans are pushing ahead, after slipping by the Judiciary Committee on a party-line vote.

Democrats have used the filibuster to delay two nominations to federal appeals courts, that of Washington attorney Miguel Estrada and Texas Supreme Court Justice Priscilla Owen.

Bush deserves the right to appoint capable, smart, conservative judges. But senators must exercise their constitutional veto over nominees whose values and judicial philosophy are way out of the mainstream.

[From the Pittsburgh Post-Gazette, July 20, 2003]

NOT FIT FOR THE BENCH

ALABAMA'S PRYOR IS A WALKING STEREOTYPE

The problem with Senate Republicans during the Clinton administration was that they too often assumed the president's nominations to the federal bench were wild-eyed liberals. Now that a Republican president is in the White House, the Democrats and their friends are playing tit-for-tat by viewing Mr. Bush's nominations as reactionary by definition.

The Post-Gazette has deplored these tendencies, which have made it difficult to sort out the slanderous caricatures from the solid characters. It is why we rose strongly to the defense last year of Western Pennsylvania's D. Brooks Smith, a Republican nominee who was eventually confirmed for an appeals court seat after seeing his record distorted by liberal special-interest groups.

One trouble with crying wolf is that, just as in the old story, sometimes a real wolf turns up. Such a one is Alabama Attorney General Bill Pryor, whom The Washington Post observed in an editorial ''is a parody of what Democrats imagine Bush to be plotting for the federal courts.''

If Mr. Pryor is confirmed for a seat on the 11th U.S. Circuit Court of Appeals, he will be well placed to begin preying on a number of settled legal precedents and doctrines. Roe v. Wade? ''The worst abomination in the history of constitutional law'' in the United States, he said. Separation of church and state? He's cozy with the religious right, so he looks favorably on such things as the display of the Ten Commandments on public property. Protect the environment? Mr. Pryor thinks the feds should get out of that business and leave it to the states.

And so it goes with this reactionary's reactionary, who would be in the mainstream only if it were far to the right.

On Thursday, the Senate Judiciary Committee put off voting on Mr. Pryor's nomination amid concerns raised about his fundraising activities for the Republican Attorneys General Association, specifically focusing on how accurately he answered the committee's questions.

This is no small matter, but it was dismissed as ''pure politics, pure and simple'' by Committee Chairman Sen. Orrin Hatch, R-Utah. In a sense, he was right, except that the process began in the White House. This nomination is entirely political, meant to curry favor with President Bush's right-wing constituency.

The delay represents an opportunity for Pennsylvania's Sen. Arlen Specter, who has a reputation for reason and moderation but has been fretting for days about exposing his flank to a right-wing challenger in the primary. Whatever happens with the fund-raising questions. Sen. Specter and the others have before them a self-confirming stereotype who should be opposed.

[From the New York Times, July 23, 2003]

AN EXTREMIST JUDICIAL NOMINEE

The Senate Judiciary Committee could vote as early as today on the nomination of the Alabama attorney general, William Pryor, to a federal appeals court judgeship. Mr. Pryor is among the most extreme of the Bush administration's far-right judicial nominees. If he is confirmed, his rulings on civil rights, abortion, gay rights and the separation of church and state would probably do substantial harm to rights of all Americans. Senators from both parties should oppose his confirmation.

Mr. Pryor, who has been nominated for a seat on the Federal Court of Appeals for the 11th Circuit, based in Atlanta, has views that fall far outside the political and legal mainstream. He has called Roe v. Wade, the landmark abortion-rights ruling, ''the worst abomination'' of constitutional law in our history. He recently urged the Supreme Court to uphold laws criminalizing gay sex, a position the court soundly rejected last month. He has defended the installation of a massive Ten Commandments monument in Alabama's main judicial building, which a federal appeals court recently held violated the First Amendment. And he has urged Congress to repeal an important part of the Voting Rights Act.

Moderates in the Senate and in the legal community have repeatedly called on the Bush administration to stop trying to stack the federal judiciary with far-right partisans like Mr. Pryor. But the White House and its supporters have chosen instead to lash out at these reasonable critics. In a shameful bit of demagoguery, a group founded by Boyden Gray, a White House counsel under the first President George Bush, has run newspaper ads accusing Mr. Pryor's critics in the Senate of opposing him because he is Catholic.

At today's committee meeting, much of the attention will be on Arlen Spector, the Pennsylvania Republican who could cast the deciding vote. Mr. Specter owes it to his constituents to break with the White House and vote against Mr. Pryor, whose extremist views are out of step with most Pennsylvanians'. Standing up for an independent, nonideological judiciary is an urgent cause, and one that should find support on both sides of the aisle.

[From the Charleston Gazette, June 30, 2003]

EXTREMIST FAR-RIGHT NOMINEE

President Bush hopes to pack the federal judiciary with numerous ultraconservative appointees who eventually will revoke women's right to choose abortion—a goal of the Republican national platform—and make other legal changes desired by the party's ''religious right'' wing.

Many of the White House appointees are evasive about their personal views when questioned at Senate confirmation hearings. But one of them, Alabaman William Pryor, nominated to the Atlanta circuit court, has

such an inflammatory record that he can't hide his extreme beliefs.

He told the senators that allowing women to choose abortion is ''morally wrong'' and this freedom has caused ''the slaughter of millions of unborn children.'' He said he once refused to take his family to Disney World on a day that gays attended, because his personal ''value judgment'' dictated it.

In the past, he has sneered at the U.S. Supreme Court as ''nine octogenarian lawyers'' because the justices delayed an execution that Pryor desired.

The New York Times commented:

''As Alabama attorney general, Mr. Pryor has turned his office into a taxpayer-financed right-wing law firm. He has testified to Congress in favor of dropping a key part of the Voting Rights Act. In a Supreme Court case challenging the Violence Against Women Act, 36 state attorneys general urged the court to uphold the law. Mr. Pryor was the only one to argue that the law was unconstitutional. This term, he submitted a brief in favor of a Texas law that makes gay sex illegal, comparing it to necrophilia, bestiality, incest and pedophilia. . . .

''If a far-right legal group needs a lawyer to argue extreme positions against abortion, women's rights, gay rights and civil rights, Mr. Pryor may be a suitable candidate. But he does not belong on the federal bench.''

Where on Earth does Bush find such narrow-minded nominees—from TV evangelist shows? It will be tragic if America's federal courts become dominated by one-sided, puritanical judges far out of step with the majority of people.

Senate Democrats are threatening filibusters to block the worst of Bush's judicial appointees. Republicans want to change Senate rules, banning filibusters when judges are up for confirmation. We hope that West Virginia's senators, Robert C. Byrd and Jay Rockefeller, do their utmost to hold the line against extremist judges.

[From the Arizona Daily Star, June 14, 2003]

DENY THE IDEOLOGUE

President Bush continues his quest to pack the American judicial system with ideologically driven, conservative activists who simply are unfit to take a seat on the nation's appellate courts. The latest is William H. Pryor, the Alabama Attorney General.

Pryor's nomination to the 11th Circuit Court of Appeals is outrageous. It is designed, as are the president's other ideological nominations, to appeal to the base instincts of the right-wing, conservative Christian element of the Republican Party.

Pryor makes no attempt to distance himself from his outlandish comments. He has said that if a Texas law outlawing homosexual sex were overturned, it would open the door to legalized ''prostitution, adultery, necrophilia, bestiality, possession of child pornography and even invest and pedophilia.''

That statement is breathtakingly bigoted.

But Pryor is a multi-dimensional ideologue. Here's his stance on Roe v. Wade, the Supreme Court decision allowing abortion: The law is ''an abominable decision'' and ''the worse abomination in the history of constitutional law.'' He opposes abortion even in the case of rape.

Though these are his personal opinions about legal decisions, he says, he would uphold the law as an appellate court judge. That is disingenuous, at best. He admitted during a Senate hearing that in a meeting with a conservative group, he ended by saying a ''prayer for the next administration: Please, God, no more Souters.''

David Souter, a Supreme Court justice appointed by the first President Bush, is widely scourned by conservatives because he is a moderate rather than a conservative Supreme Court justice.

Only once during questioning before the Senate Judiciary hearing on his nomination did Pryor backtrack on previous remarks. He admitted he made an inappropriate remark when he referred to the Supreme Court as ''nine octogenarian lawyers who happen to sit on the Supreme Court.'' He made the comment after the Court issued a stay of execution in his state. They stay was issued in order to determine whether the use of the electric chair was unconstitutional.

His background also includes efforts to allow students-led prayers in schools; defense of an Alabama judge who displays the 10 Commandments in his courtroom; and support of Alabama prison guards who handcuff prisoners to hitching posts during the summer.

Civil rights activists signed a letter arguing against Pryor's confirmation. The letter said the group was alarmed that Pryor ''. . . is not only an avowed proponent of the modern states rights movement, now called federalism, but he has also asked Congress to 'repeal or amend' Section 5 of the Voting Rights Act, which he said is an 'affront to federalism.' '' The section requires Justice Department approval to changes in voting procedures made by states.

This ideologue is also delusional. Pryor believes that only guilty people are executed in this country. The judicial system, he said, has ''extraordinary safeguards, many safeguards.'' Further, he said, ''the system catches errors.''

One of the benefits of nominating a right-winger like Pryor is that the president gets valuable political points for it. Even if Pryor is not confirmed by the Senate, and he should not be, the president still wins. In this age of cynical politics, Bush will get credit among the most distasteful elements of his party for nominating one of their own for a seat on the bench. It will serve him well when he runs for re-election.

[From the Los Angeles Times, June 30, 2003]

SKEWED PICTURE OF AMERICA

By nominating William H. Pryor Jr. to the federal appeals court, George Bush has declared that the Alabama attorney general is not only qualified to sit on the nation's second-highest court but is the kind of judge most Americans want. Senators should reject this implausible assessment.

Even though the Senate has already confirmed 132 judges, pushing court vacancies to a 13-year low, the White House still complains about delays. Go-along-to-get-along Republicans may want to approve Pryor rather than buck their president.

But the appointment of Pryor, 41, to a lifetime seat on the U.S. Court of Appeals would be an endorsement of an ominous view of American law. At this month's Senate Judiciary Committee hearing, he defended—even amplified on—his disturbing views. His candor is refreshing but it leaves squirming senators no cover.

''Congress . . . should not be in the business of public education nor the control of street crime,'' he has argued, a position at odds with Bush's education initiative and support for beefed-up law enforcement and tougher criminal penalties.

Pryor contends that the Constitution does not grant the federal government power to protect the environment. He regards Roe vs. Wade, the 1973 Supreme Court decision upholding the legal right to an abortion, as ''the worst abomination of constitutional law in our history'' and hopes that the landmark ruling will be overturned.

He would urge repeal of the 1965 Voting Rights Act requirement that the federal government review state and local changes to voting procedures that may affect minorities. It's ''an affront to federalism and an expensive burden,'' Pryor believes.

Before the Supreme Court last week struck down Texas' anti-sodomy statute, he argued for upholding that law and another like it in Alabama. If the Constitution protects the choice of a sexual partner, he contends, it also permits ''prostitution, adultery, necrophilia, bestiality . . . and even incest and pedophilia.'' He also believes that the 1st Amendment's establishment clause should permit a two-ton granite representation of the Ten Commandments to sit in an Alabama courthouse.

These views and Pryor's lack of judicial experience caused the American Bar Assn. to splinter over his fitness for the appeals seat.

With the Senate already having confirmed so many of Bush's picks for the federal bench, there's no argument for this unqualified nominee.

Mr. LEAHY. We have also heard from a number of organizations and individuals concerned about justice before the Federal courts. The Log Cabin Republicans, the Leadership Conference on Civil Rights, the Alliance for Justice, NARAL and many others have provided the committee with their concerns and the basis for their opposition. We have received letters of opposition from organizations that rarely take positions on nominations but feel so strongly about this one that they are compelled to write, including the National Senior Citizens' Law Center, the Anti-Defamation League and the Sierra Club. I ask unanimous consent to print a list of the letters of opposition we have received in the RECORD.

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

LETTERS OF OPPOSITION TO THE NOMINATION OF BILL PRYOR, TO THE 11TH CIRCUIT COURTS OF APPEAL

ELECTED OFFICIALS

Congressional Black Caucus.

PUBLIC INTEREST ORGANIZATIONS

Ability Center of Greater Toledo, Access Now, Inc., ADA Watch, AFL-CIO, AFSCME, Alliance for Justice, Americans for Democratic Action, American Association of University Women, Americans United for Separation of Church and State, Anti-Defamation League, B'nai B'rith International, California Council of the Blind, California Foundation for Independent Living Centers.

Citizens for Consumer Justice of Pennsylvania letter also signed by: PennFuture, Sierra Club, NARAL-Pennsylvania, National Women's Political Caucus, PA, United Pennsylvanians.

Coalition For Independent Living Options, Inc., Coalition To Stop Gun Violence, Disabled Action Committee, Disability Resource Agency for Independent Living, Stockton, CA, Disability Resource Center, North Charleston, SC, Eastern Paralyzed Veterans Association, Jackson Heights, NY, Eastern Shore Center for Independent Living, Cambridge, MD.

Environmental Coalition Letter signed by: American Planning Association, Clean Water Action, Coast Alliance, Community Rights Counsel, Defenders of Wildlife, EarthJustice, Endangered Species Coalition, Friends of the Earth, National Resources Defense Council, The Ocean Conservancy, Oceana, Physicians for Social Responsibility, Sierra Club, U.S. Public Interest Research Group, The Wilderness Society, Alabama Environmental Council, Alliance for Affordable Energy, Buckeye

Forest Council, Capitol Area Greens, Citizens Coal Council, Committee for the Preservation of the Lake Purdy Area, Dogwood Alliance, Foundation for Global Sustainability, Friends of Hurricane Creek, Friends of Rural Alabama, Kentucky Resources Council, Inc., Landwatch Monterey County, Sand Mountain Concerned Citizens, Southern Appalachian Biodiversity Project, Tennessee Environmental Enforcement Fund, Waterkeepers Northern California, Wisconsin Forest Conservation Task Force.

Feminist Majority, Heightened Independent & Progress, Houston Area Rehabilitation Association, Human Rights Campaign, Independent Living Center of Southern California, Inc., Independent Living Resource Center, Ventura, CA, Interfaith Alliance.

Justice for All letter signed by the following California organizations: Southern California Americans for Democratic Action, California Abortion and Reproductive Rights Action League, California Women's Law Center, Committee for Judicial Independence, Democrats.Com of Orange County, San Diego Democratic Club, National Center for Lesbian Rights, National Council of Jewish Women/Los Angeles, California National Organization for Women, Planned Parenthood Los Angeles County Advocacy Project, Progressive Jewish Alliance, Public Advocates, Inc., Rock the Vote Educational Fund, Stonewall Democratic Club, Unitarian Universalist Project Freedom of Religion, Workmen's Circle/Arbeter Ring, Lake County Center for Independent Living, IL, Leadership Conference on Civil Rights, Log Cabin Republicans, MALDEF, NAACP, NARAL Pro-Choice America, National Abortion Federation, National Association of Criminal Defense Lawyers, National Council of Jewish Women, National Council of Jewish Women Chapter in Florida, Alabama and Georgia, National Disabled Students Union, National Employment Lawyers Association, National Family Planning & Reproductive Health Association, National Partnership for Women & Families, National Resource Defense Council, National Senior Citizens Law Center, National Women's Law Center, New Mexico Center on Law and Poverty, Albuquerque, NM, Options Center for Independent Living, People for the American Way, Pennsylvania Council of the Blind, Placer Independent Resource Services, Planned Parenthood Federation of America, Protect All Children's Environment, Marion, NC, Religious Action Center of Reform Judaism, SEIU, Sierra Club, Society of American Law Teachers, Summit Independent Living Center, Inc., Missoula, MT, Tennessee Disability Coalition, Nashville, TN, Vermont Coalition for Disability Rights.

LETTERS FROM THE 11TH CIRCUIT

Joseph Lowery, Georgia Coalition for the Peoples' Agenda, NAACP, Alabama State Conference, Alabama Chapter of the National Conference of Black Lawyers, Alabama Hispanic Democratic Caucus, Hispanic Interest Coalition of Alabama, Latinos Unidos De Alabama, Jefferson County Progressive Democratic Council, Inc., Morris Dees, Co-Founder and Chief Trial Counsel, Southern Poverty Law Center, Bryan Fair, Professor of Constitutional Law at University of Alabama, Tricia Benefield, Cordova, AL, Judy Collins Cumbee, Lanett, AL, Michael and Becky Pardoe, Mobile, AL, Harold Sorenson, Rutledge, AL, Patricia Cleveland, Munford, AL, Larry Darby, Montgomery, AL, Sisters of Mercy letter signed by Sister Dominica Hyde, Sister Alice Lovette, Sister Suzanne Gwynn, Ms. Cecilia Street and Sister Magdala Thompson, Mobile, AL.

LETTER SUBMITTED BY CIVIL RIGHTS MOVEMENT VETERANS

Rev. Fred Shuttlesworth, Leader, Birmingham Movement; Rev. C.T. Vivian, Executive Staff for Dr. Martin Luther King, Jr.; Dr. Bernard LaFayette, Executive Staff for Dr. Martin Luther King, Jr.; Rev. Kim Lawson, Jr., Advisor to Dr. Martin Luther King, Jr.; President of Southern Christian Leadership Conference (Los Angeles); Rev. James Bevel, Executive Staff or Dr. Martin Luther King, Jr.; Rev. James Orange, Organizer for National Southern Christian Leadership Conference; Claud Young, M.D., National Chair, Southern Christian Leadership Conference; Rev. E. Randel T. Osbourne, Executive Director, Southern Christian Leadership Foundation.

Rev. Joseph Ellwanger, Alabama Movement Activist and Organizer; Dorothy Cotton, Executive Staff for Dr. Martin Luther King, Jr.; Rev. Abraham Woods, Southern Christian Leadership Conference; Thomas Wrenn, Chair, Civil Rights Activist Committee, 40th Year Reunion; Sherrill Marcus, Chair, Student Committee for Human Rights (Birmingham Movement, 1963); Dick Gregory, Humorist and Civil Rights Activist; Martin Luther King, III, National President, Southern Christian Leadership Conference; Mrs. Johnnie Carr, President, Montgomery Improvement Association (1967–Present) (Martin Luther King, Jr. was the Association's first President. The Association was established in December, 1955 in response to Rosa Park's arrest.)

OTHER

H.J. Bobb, Defiance, OH; Davis Budd, Sr, Defiance, OH; Don Beryl Fago, Evansville, WI; Daily Dupre, Jr., Lafayette, LA; Greg Jones, Parsons, KS; Catherine Koliha, Boulder, CO; Ashley Lemmons, Defiance, OH; Rebecca Lindemann, Defiance, OH; Patricia Murphy, Juneau, AK; Randy Wagoner, location unknown; Rabbi Zev-Hayyim Feyer, Murrieta, CA.

Mr. LEAHY. The ABA's evaluation also indicates concern about this nomination. Their Standing Committee on the Federal Judiciary gave Mr. Pryor a partial rating of ''not qualified'' to sit on the Federal bench. Of course this is not the first ''not qualified'' rating or partial ''not qualified'' rating that this administration's judicial nominees have received. As of today, 20 of President Bush's nominees have received some form of ''not qualified'' rating. Perhaps that is a reflection of the ideological basis for so many of these nominations, and the concern on the part of some on what has been a rather compliant ABA committee that these nominees cannot be fair to every litigant who may come before them.

Like Jeff Sutton, Bill Pryor has been a crusader for the federalist revolution, but Mr. Pryor has taken an even more prominent role. Having hired Mr. Sutton to argue several key federalism cases in the Supreme Court, Mr. Pryor is the principal leader of the federalist movement, promoting state power over the Federal Government.

A leading proponent of what he refers to as the ''federalism revolution,'' Mr. Pryor seeks to revitalize State power at the expense of Federal protections, seeking opportunities to attack Federal laws and programs designed to guarantee civil rights protections. He has urged that Federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited.

He has argued that the Federal courts should cut back on the protections of important and well-supported federal laws including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, and the Family and Medical Leave Act. He has repudiated decades of legal precedents that permitted individuals to sue States to prevent violations of Federal civil rights regulations. Mr. Pryor's aggressive involvement in this ''federalist revolution'' shows that he is a goal-oriented, activist conservative who has used his official position to advance his ''cause.'' Alabama was the only State to file an amicus brief arguing that Congress lacked authority to enforce the Clean Water Act. He argued that the Constitution's commerce clause does not grant the Federal Government authority to prevent destruction of waters and wetlands that serve as a critical habitat for migratory birds. While this is a sign to most people of the extremism, Mr. Pryor trumpets his involvement in these cases and is proud of his work to limit Congress's authority.

Bill Pryor's passion is not some obscure legal theory but something in which he has believed deeply since he was a student and something that guides his actions as a lawyer. Mr. Pryor's speeches and testimony before Congress demonstrate just how deeply-rooted his views are, how much he seeks to effect a fundamental change in the country, and how far outside the mainstream his views are. Mr. Pryor's judicial ideology is something in which he deeply believes, not just an argument that he makes as a lawyer.

Mr. Pryor is candid about the fact that his view of federalism is different from the current operation of the Federal Government—and that he is on a mission to change the Government to fit his vision. His goal is to continue to limit Congress's authority to enact laws under the 14th amendment and the commerce clause—laws that protect women, ethnic and racial minorities, senior citizens, the disabled, and the environment—in the name of sovereign immunity. Is there any question that he would pursue his agenda as a judge on the Eleventh Circuit Court of Appeals—reversing equal rights progress and affecting the lives of millions of Americans for decades to come?

His strong views against providing counsel and fair procedures for death row inmates have led Mr. Pryor to doomsday predictions about the relatively modest reforms in the Innocence Protection Act to create a system of competent counsel. When the U.S. Supreme Court questioned the constitutionality of Alabama's method of execution in 2000, Mr. Pryor lashed out at the Supreme Court, saying

''[T]his issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court.'' Aside from the obvious disrespect this comment shows for this Nation's highest Court, it shows again how results-oriented Mr. Pryor is. Of course an issue about cruel and unusual punishment ought to be decided by the Supreme Court. It is addressed in the eighth amendment, and whether or not we agree on the ruling, it is an elementary principle of constitutional law that it be decided by the Supreme Court, no matter how old its members.

Mr. Pryor has also vigorously opposed an exemption for persons with mental retardation from receiving the death penalty, exhibiting more certainty than compassion. He authored an amicus curiae brief to the Supreme Court arguing that the Court should not declare that executing mentally retarded persons violated the eighth amendment. After losing on that issue, Mr. Pryor made an unsuccessful argument to the eleventh circuit that an Alabama death-row defendant is not mentally retarded.

Mr. Pryor has spoken harshly about the moratorium imposed by former Illinois Governor George Ryan, calling it a ''spectacle,'' and saying that it will ''cost innocent lives.'' How can someone so sure of his position be relied upon to hear these cases fairly? Over the last few years, many prominent Americans have begun raising concerns about the death penalty, including current and former supporters of capital punishment. For example, Justice O'Connor recently said there were ''serious questions'' about whether the death penalty is fairly administered in the United States, and added: ''[T]he system may well be allowing some innocent defendants to be executed.'' In response to this uncertainty, Mr. Pryor offers us nothing but his steadfast belief that there is no problem with the application of the death penalty. This is a position that cannot possibly offer a fair hearing to a defendant on death row.

Mr. Pryor's troubling views on the criminal justice system are not limited to capital punishment. He has advocated that counsel need not be provided to indigent defendants charged with an offense that carries a sentence of imprisonment if the offense is classified as a misdemeanor. The Supreme Court nonetheless ruled that it was a violation of the sixth amendment to impose a sentence that included a possibility of imprisonment if indigent persons were not afforded counsel.

Like Carolyn Kuhl, Priscilla Owen, and Charles Pickering, Bill Pryor is hostile to a woman's right to choose. There is every indication from his record and statements that he is committed to reversing Roe v. Wade. Mr. Pryor describes the Supreme Court's decision in Roe v. Wade as the creation ''out of thin air [of] a constitutional right,'' and opposes abortion even in cases of rape or incest.

Mr. Pryor does not believe Roe is sound law, neither does he give credence to Planned Parenthood v. Casey. He has said that, ''Roe is not constitutional law,'' and that in Casey, ''the court preserved the worst abomination of constitutional law in our history.'' When Mr. Pryor appeared before the committee, he repeated the mantra of those who desire confirmation, saying that he would ''follow the law.'' But his deeply held and intense commitment to overturning established Supreme Court precedent that protects fundamental privacy rights makes it impossible to give his promises any credence.

Bill Pryor has expressed his opposition to fair treatment of all people regardless of their sexual orientation. The positions he took in a brief he filed in the recent Supreme Court case of Lawrence v. Texas were entirely repudiated by the Supreme Court majority just a few weeks ago when it declared that the ''The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private conduct a crime.'' Mr. Pryor's belief is the opposite. He would deny certain Americans the equal protection of the laws, and would subject the most private of their behaviors to public regulation.

Mr. Pryor's comments have revealed an insensitivity to the barriers that disadvantaged persons and members of minority groups and women continue to face in the criminal justice system.

In testimony before Congress, Bill Pryor has urged repeal of Section 5 of the Voting Rights Act the centerpiece of that landmark statute because, he says, it ''is an affront to federalism and an expensive burden that has far outlived its usefulness.'' That testimony demonstrates that Mr. Pryor is more concerned with preventing an ''affront'' to the States' dignity than with guaranteeing all citizens the right to cast an equal vote. It also reflects a long-discredited view of the Voting Rights Act. Since the enactment of the statute in 1965, every Supreme Court case to address the question has rejected the claim that Section 5 is an ''affront'' to our system of federalism. Whether under Earl Warren, Warren Burger, or William Rehnquist, the United States Supreme Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy not a ''burden'' that has ''outlived its usefulness.''

On all of these issues, the environment, voting rights, women's rights, gay rights, federalism, and more, William Pryor's record of activism and advocacy is clear. That is his right as an American citizen, but it does not make him fit to be a judge or likely to be fair on such issues. I think the length and level of his devotion to these issues creates a situation in which his impartiality on such issues would reasonably be questioned by litigants in his court. He should not be confirmed to the United States Court of Appeals for the Eleventh Circuit.

Mr. HATCH. I yield to the distinguished Senator from California, and I intend to take the floor as soon as she is through.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object.

Mr. DOMENICI. Object to what?

Mr. HATCH. You cannot object.

Mr. DORGAN. Does the Senator from Utah, does the chairman of the committee, have the opportunity to yield the floor to another Member of the Senate?

The PRESIDING OFFICER. He does not.

Mr. DORGAN. What did the Senator from Utah just try to do?

Mrs. FEINSTEIN. It was a nice thing.

Mr. HATCH. I ask unanimous consent that the distinguished Senator from California be recognized for 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I object.

Mr. DOMENICI. Reserving the right to object, I want to say to everyone who is listening, in case you are confused, we are not on the Energy bill.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mrs. FEINSTEIN. Mr. President.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Is there an objection to the unanimous consent request of the Senator from Utah?

Mr. DORGAN. I object.

The PRESIDING OFFICER. There is an objection.

Mr. HATCH. Mr. President, let me take the floor. I am going to yield the floor in just a second.

I expect the distinguished Senator from California to be recognized so she can take 15 minutes. Then I am going to warn the Senate, right now, the minute she is through, I want the floor back, and I have a right to have it as the leader on the majority side. Am I right, parliamentarily?

The PRESIDING OFFICER. The Senator from Utah is seeking recognition. He has priority of recognition as the majority manager.

Mr. DORGAN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from North Dakota will state his parliamentary inquiry.

Mr. DORGAN. Mr. President, the Senator from Utah stated that when he finishes his presentation, he expects the Senator from California to be recognized, after which he expects to be recognized.

Does the Senator from Utah have a right to yield the floor to the Senator from California?

Mr. HATCH. I didn't do that.

The PRESIDING OFFICER. He does not have the right to yield the floor, but he did not propose that as a unanimous consent request.

Mr. DORGAN. Mr. President, the Senator from Utah has priority recognition as manager of the bill. He

may seek the floor on that basis following the presentation by the Senator from California, not by prearrangement, however; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. Thank you.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, thank you very much. I thank the chairman of the committee and I thank the ranking member.

I have served on this committee for 10 years. I love this committee. The Presiding Officer serves on this committee. It is a challenging committee. It is particularly challenging for me because I am a nonlawyer. I have had a great opportunity to work across the aisle on any number of different proposals with the chairman of the committee, with the Senator from Arizona, Mr. KYL, with Senator LINDSEY GRAHAM, with others. I have enjoyed it. There has always been a spirit of collegiality.

However, that spirit of collegiality is at a crossroads. Something very ugly has been injected. It has to do with this nominee, and it has to do with circumstances around this nominee. I will spend a few moments discussing them. This kind of thing that has been going on has to stop.

Last week, the Democratic members of the committee were accused by outside groups, and even some of our colleagues on the committee, of applying an anti-Catholic religious litmus test on the nomination of William Pryor. These charges are false. They are baseless. They are offensive. And they are beneath the dignity of a Senate committee tasked with making very important decisions on the future of the Federal judiciary.

We have heard a lot about the ad. I never thought I would see an ad like this. It is a rather insidious ad. I will not show it, but I will describe it. It is two courtroom doors. Atop it says ''Judicial Chambers.'' On the doorknob hangs a sign that says ''Catholics Need Not Apply.'' When I saw this ad, I thought we were going back decades. When I saw this ad, I thought: Uh-oh, if there is one thing I know—and I have watched cities polarized, I have seen assassinations result from the polarization—I know what happens when people seek to divide. One of the easiest ways to divide is to use race or religion in an adverse manner. That is what this ad sought to do. It sought to divide.

Then I watched C–SPAN the other night. I saw clergy discussing the ad. I saw them beginning to believe that religious litmus tests were being used by the Judiciary Committee. Now, in fact, that has never been the case.

Senator SCHUMER pointed out during Mr. Pryor's markup in the committee that this kind of thing is becoming somewhat of a pattern. Once it becomes a pattern, no one really knows where it goes.

We have not opposed a lot of nominees. The ranking member has made that clear: 140 nominations have gone through. Just today we had a hearing in the morning. I introduced two California judges who were going through in a 4-month period of time, new judges produced because the chairman and the ranking member agreed there was a very heavy caseload in San Diego and there should be a number of new judges. They were nominated in May. Already these judges have had their hearing. So good things do happen.

However, each time we have opposed a nominee, there has been bias used as a rationale for those who do not agree with us, to purport that bias is part of our rationale. It happened with an anti-Hispanic charge with Miguel Estrada, an anti-woman charge with Priscilla Owen, an anti-Baptist charge with Charles Pickering, and now with William Pryor an anti-Catholic charge.

You have no idea what happens when this begins to circulate throughout the electorate. People do not know exactly what goes on. It is a dastardly thing to do. In a sense it is scurrilous, because it caters to the basic insecurity of all of us who share a religion that may be different from someone else's. So it has a truly insidious quality to it.

To call us antiwoman—I don't have to tell you how bizarre it is for me to be called antiwoman. And to say we have set a religious litmus test is really equally false.

Many of us have concerns about nominees sent to the Senate who feel so very strongly, and sometimes stridently, and often intemperately about certain political beliefs and who make intemperate statements about those beliefs. So we raise questions about whether those nominees can be truly impartial, particularly when the law conflicts with those beliefs.

It is true that abortion rights can often be at the center of these questions. As a result, accusations have been leveled that any time reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice. But pro-choice Democrats on this committee have voted for many nominees who are anti-choice and who believe that abortion should be illegal, some of whom may even have been Catholic. I do not know because I have never inquired.

So this truly is not about religion. This is about confirming judges who can be impartial and fair in the administration of justice. I think when a nominee such as William Pryor makes inflammatory statements and evidences such strongly held beliefs on a whole variety of core issues, it is hard for many of us to accept that he can set aside those beliefs and act as an impartial judge—particularly because he is very young, 41; particularly because this is a lifetime appointment; and particularly because we have seen so many people who have received lifetime appointments then go on and do just what they want, regardless of what they said. So it is of some concern to us.

I hope these accusations will stop. I hope we can focus on the merits of each nominee, not on baseless allegations against Members of the Senate who are trying to do their constitutional duties.

I am very concerned because, to date, not a single Member on the other side has said they believe these ads are baseless, have said they know we do not practice this kind of decisionmaking. No one has disavowed these ads.

So I call on the committee to disavow these ads. I call on the administration to disavow these ads. And I call on them to set the record straight.

There was a time in our history when the phrase ''Catholics need not apply'' was used to keep countless qualified Americans from pursuing the American dream. The same can be said for ''no Jews need apply'' and ''no Irish need apply.'' And, much like Justice Sandra Day O'Connor, when she first looked for her first job and I first looked for my first job, really ''women need not apply.''

In fact, I lost my first job to a man who was less qualified than I, but I was a woman and I had a small child and at that time that was not much coin of the realm to get a job. So I was beaten out many times by men who were less qualified—had less academic experience, less graduate experience, et cetera.

These were dark times in American history and many of us in this body remember those times. But every one of us should be absolutely committed to preventing those days from ever recurring. What this is a sign of is that those days are beginning to occur again.

I hope we do not see political cheapshot artists bringing painful phrases back for the purposes of intimidating Senators and stacking Federal courts. We should be above that in this debate. This is the Senate, as the distinguished Senator from Nevada has said, and our constitutional duty should not be marred by false allegations or intimidating political tactics. Our Nation's history in fighting bigotry of all kinds must continue. I urge my colleagues very sincerely to condemn these tactics and move on to debating the merits of controversial nominees.

Now a second event at the Pryor markup also disturbed me greatly and was especially troubling because we faced a repeated refusal to acknowledge the clear application of a longstanding committee rule on ending debate. Without the violation of the rule, Mr. Pryor would still be before the Judiciary Committee, as I deeply believe he should be.

The Judiciary Committee rules contain a clause known as Rule 4 that prevents closing off debate on a nominee unless at least one member of the minority agrees to do so.

It isn't used a lot but it has been used before when I have been on the committee.

During debate on the Pryor nomination, the Ranking Member attempted to invoke this rule because members of the minority did not believe that an ongoing investigation into Mr. PRYOR's nomination had been given sufficient time.

Serious allegations were made about Mr. Pryor's truthfulness to the committee during the hearing, and staff had been looking into those allegations. Put simply, the job has not been completed.

But, as Chairman HATCH did earlier this Congress with regard to the nomination of Deborah Cook and John Roberts, he chose to ignore this rule and force through a vote over the objections of every member of the minority on the committee.

We thought the issue had been resolved during discussions over what happened last time, but apparently we were wrong.

The rule contains the following language:

The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bringing the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.

That is a reading on its face. It stands on its face. It is what it is.

Over the last few decades, it has clearly meant that unless one member of the minority agrees to cut off debate and move straight to a vote, no vote can occur. This is one of the only protections the minority party has in the Judiciary Committee. Without it, there might never be debate at all. A chairman could convene a markup, demand a vote, and the entire process would take 2 minutes. This is not how a deliberative body should function, and more importantly, it is contrary to the rules. Either the rules are observed or we have chaos on the committee. If we do not like the rules, we should change the rules. But we should follow the rules.

As I understand it, this rule was first instituted in 1979. Senator KENNEDY was chairman of the committee at the time. It has been followed ever since.

Senator HATCH, our current chairman, has also followed the rule. I make no bones about the fact that I am very fond of the chairman, but he has been going through some kind of a change lately, and I don't quite know what it is.

During the markup of Bill Lann Lee to be the Assistant Attorney General for the civil rights division, there was some fear that Republicans, who had the votes to defeat the nomination would move directly to a vote and prevent any debate on the issue at the markup. Democrats, on the other hand, wanted the chance to explain their position, and maybe even try to change some minds on the other side.

During that markup, then, there was significant discussion about what rule 4, the rule about cutting off debate, really means. At one point, it is interesting to note, Chairman HATCH himself commented that:

At the appropriate time, I will move to proceed to a vote on the Lee nomination. I assume there will be no objection. It seems to me he deserves a vote. People deserve to know where we stand on this issue. Then we will, pursuant to Rule IV, vote on whether to bring the Lee nomination to a vote. In order to vote on the nomination, we need at least one Democrat to vote to do so.

That is precisely what we are discussing. The situation then was the same as the situation regarding Mr. Pryor. In order to vote on the nomination, we need at least one Democrat to vote to do so. But we never even had the chance to vote on cutting off debate.

I don't need to lecture this body that we are a nation of laws. We know that. We expect these laws to be obeyed. This is a Senate of rules. Our rule book is 1,600 pages long. There is no greater expert on rules than the senior Senator from the great State of West Virginia. Rules have always been observed. Some of them are complicated. This happens to be pretty simple, and we all understand it.

I want to spend a moment on the materials that have been before us that are being investigated. The materials in question came to the Judiciary Committee just 2 or 3 weeks ago.

Those materials raise real questions about whether Mr. Pryor misled the committee about his activities on behalf of the Republican Attorneys General Association, a fundraising organization that I believe raises serious concerns about conflicts of interest.

For instance, questions have been raised about whether Mr. Pryor raised money from tobacco companies, while at the same time arguing against pursuing those companies through litigation. I don't know whether this allegation is true or not true. None of us do. I wasn't really prepared to vote. But we should look into it and we should be able to match his statements to the committee with the facts.

There are other areas where the documents given to the committee suggest that Mr. Pryor may not have been completely forthcoming at his hearing.

We will never get past the partisan bad-feelings that are increasingly apparent in the Judiciary Committee if we cannot even rely on having our rules followed to the extent of carrying out an investigation with materials about which none of us knew existed when we had the hearing on the nominee.

On the merits, this is a nominee who has been before us for just a few months.

I mentioned the investigation. I mentioned rule 4. But let me go into a couple of the merits from our side and from our point of view.

He used his position as Attorney General to limit the scope of crucial civil rights laws like the Violence Against Women's Act, the Age Discrimination In Employment Act, the American with Disabilities Act, the Fair Labor Standards Act, and the Family Medical Leave Act.

He said that he doesn't believe that the Federal Government should be involved in ''education or street crime.''

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

Mrs. FEINSTEIN. I beg your pardon?

The PRESIDING OFFICER. The Senator from California has the floor.

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

Mrs. FEINSTEIN. No. I would rather finish my remarks. If I have time left, I will yield.

Mr. SESSIONS. I wanted to clear up a misstatement.

The PRESIDING OFFICER. The Senator from California has the floor.

Mrs. FEINSTEIN. Mr. Pryor calls Roe v. Wade ''the worst abomination of constitutional law in our history.'' He has written that he could ''never forget January 22, 1973, the day seven members of our highest court ripped out the life of millions of unborn children.'' That is a quote. It is a very strong statement.

He has lobbied for the repeal of section V of the Voting Rights Act.

After the Bush v. Gore decision, Pryor made the astounding statement, ''I'm probably the only one who wanted [the decision] 5–4 . . . I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.''

This is a sitting attorney general taking on a Justice of the U.S. Supreme Court by name. I have never heard of that before. Of course, there is always a first time. It was also an attack on a Justice who was well known as being more moderate than he was expected to be and who does not simply toe a party line.

So is Mr. Pryor saying he would want only those judges who remain completely faithful to the ideology of those who choose them? Is he saying that Justice Souter is simply not conservative enough? I think he is.

Mr. Pryor has taken positions so extreme that they are at odds with the rest of the Nation's attorneys general. For example, he was the only attorney general to argue against a key provision in the Violence Against Women Act on federalism grounds.

So there is a reason we feel strongly about it.

My experience is that in appointing someone to the trial bench when that individual has never been a judge is probably a good idea, even if they are an attorney general. One can make some judgments about people who hold political office and who are strong advocates as to whether in fact they can separate themselves from their ideology, whatever that ideology may be.

I believe people can do this. I voted for Jeffrey Sutton because I had that belief. In this case, I am not so sure because the rhetoric is so strident and so very intemperate.

The Senator from Alabama, who is present on the floor, believes he can, and there are people who believe he can. But I think the jury is out because there is a venture into an attack on a sitting U.S. Supreme Court Justice, there is a characterization of a landmark Supreme Court case as ''an abomination,'' and other things as well. There is an attack on many significant—significant to those of us on this side of the aisle—pieces of Federal legislation.

Truly, this is a nomination that deserves and merits debate—an open debate. But I would like the debate to take place with the observation of the rules of the committee and after the investigation that is ongoing is finished.

I hope the Senator from North Dakota's importuning to leadership is taken. We don't need to have a cloture vote at this time on this nominee. That cloture vote can come after the results of the investigation are finished—certainly after the Energy bill—because I think if a cloture vote is taken, these arguments I have made on the merits of the case are really going to be dispositive as far as votes on our side are concerned.

I thank the Chair. I yield the floor. I thank very much the chairman of the committee.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished Senator from California as well. I feel very deeply toward her. I think she is a wonderful person, and I think she is a fine Senator who works very hard on the Judiciary Committee. And I appreciate her kind remarks about me.

Mr. President, let me make something clear. I keep hearing that we are going to vote on judges. Well, I certainly wish that were the case. What we are talking about is a cloture vote tomorrow, and one on Friday. It is not unusual at all, in fact it is a matter of course, for the Senate to double track various items in the interests of the body to keep on top of matters.

The two trade bills are extremely important for this country, with two of our greatest allies and supporters, Chile and Singapore. It needs to be done. There is no reason to have hours of debate on it. There are some hard feelings about it, and so forth, but it can be done.

We could have debated this in the hour before the cloture vote, which is what the rule calls for. If we invoke cloture, there will be ample opportunity to devote time to the total debate on General Pryor.

But now let me just make another point or two. The distinguished Senator from California is very upset at him because he actually took up to the Supreme Court an issue on the Violence Against Women Act. She takes great umbrage at that. Unfortunately, he won. So to indicate that he may be outside the mainstream or somebody who should not be supported because he wins in front of the Supreme Court—and almost everything they criticize, as far as Supreme Court matters are concerned, he has won on, until this last term when he lost on a couple of issues. And in every case he followed what he believed the law was regardless of his own personal beliefs. By the way, I am one of the coauthors in the Congress of the Violence Against Women Act.

So to criticize him for something that the Supreme Court agrees with him on gives an indication who is outside the mainstream. It isn't General Pryor. And there is case after case after case where he wins that has been criticized by our colleagues over there as though somehow or other he has been off the charts when it comes to the law. He has been on the charts. I admit, he has lost some, too. But I don't know of anybody who has taken multiple cases to the Supreme Court who has won everything. I know a few who have had pretty good records—and he has one of the better records as an attorney general in this country.

My Democratic colleagues assert, in laundry list format, that General Pryor is basically against everything they are for. He is ''out of the mainstream.'' We hear that over and over again. Pryor is against civil rights, disability rights, minorities and women themselves, the environment—the whole thing, presumably, and of course—abortion rights.

I am paraphrasing just one Democratic Senator's statement during the markup on July 23, 2003, but it is a fair representation of the types of assertions against General Pryor that are designed not to debate his fitness for the Federal bench but, rather, to strangle debate before it begins. To paint this excellent nominee as so ''extreme'' as to be not worth discussing.

By the way, we did not bring this debate up tonight. I did not want to stand here tonight and answer these so-called allegations. My friends on the other side did. They are the ones who interrupted the Energy bill, which is being slow-walked. And we all understand that—as almost everything has been this year.

These are what you call obstructionist tactics. And that is what is going on here. For them to come out here on the Senate floor and act like, well, we are interrupting the energy debate—it is almost more than I can take.

This energy debate is very important. It should be over. And I would be happy to end it right now, have the cloture vote tomorrow. I will even give up the hour before cloture, if they want to, to keep working on the Energy bill. But, no, that is not what they are doing. This is all a slow-walk to try to make this Congress look as if it isn't a good one, even though, in spite of these slow-walks, we have done bill after bill after bill, some of them extremely important pieces of legislation.

Let me provide you with a succinct but very different, and much more realistic picture of General Pryor.

General Pryor has been criticized as insensitive to the rights of the disabled because he argued in the Garrett case that the Americans with Disabilities Act could not, under section 5 of the 14th amendment, validly abrogate States' 11th amendment immunity and authorize money damage suits against States in Federal court.

But the Supreme Court agreed with General Pryor. He is being criticized by others on the Senate floor for cases that he has won in the Supreme Court.

He has also been criticized as insensitive to age-based discrimination because he and a bipartisan group of 23 other State attorneys general—23 other bipartisan State attorneys general—argued in the Kimel v. Florida Board of Regents case that the provision of the Age Discrimination in Employment Act that allowed money damage suits against States in Federal courts was invalid under the 11th amendment, something that they should have argued because it is an important issue.

But, again, the Supreme Court agreed with General Pryor. He is being criticized for winning cases in the Supreme Court as though he is the one who is out of the mainstream. I don't think it takes any brains to realize who is out of the mainstream. It is not General Pryor.

And we have heard criticism that he is insensitive to women's rights because he argued in the case of U.S. v. Morrison that neither the commerce clause nor the 14th amendment provided Congress with the authority to enact one civil remedies provision of the Violence Against Women Act. But the Supreme Court agreed with him again.

Further, General Pryor has been criticized as anti-environment because of his argument in Solid Waste Agency of Northern Cook County that the Army Corps of Engineers did not have the authority, under the Federal Clean Water Act, to exercise Federal jurisdiction over entirely intrastate bodies of water—in this case, an abandoned gravel pit.

He was arguing for his State, which is what attorneys general are obligated to do. He even urged the Court not to reach the issue of whether the Commerce Clause allowed Congress to regulate entirely intrastate bodies of water. The Court did not reach the Commerce Clause issue and again agreed with General Pryor's statutory interpretation argument.

So I guess those who oppose Pryor are saying when the Supreme Court agrees with you that an environmental statute should be interpreted in accordance with its actual language, rather than expanded through bureaucratic fiat, that makes you extreme

and anti-environment, especially when you win the case in front of the Supreme Court. Talk about turning the world upside down.

General Pryor has even been criticized as insensitive to civil rights concerns because of his argument in Alexander v. Sandoval that there is no private right of action under title VI of the Federal Civil Rights Act to challenge Alabama's policy of issuing drivers' licenses only to English speakers—a policy that I understand is no longer in effect. Once again, the Supreme Court agreed with his argument, holding that Congress, not Federal courts, should create causes of action to enforce Federal laws. That proposition should not be controversial, nor should supporting it be held against General Pryor, who again won in the Supreme Court.

Finally, let me just give one more example. The Supreme Court, including Justice Souter, agreed with General Pryor's argument in the Scheidler v. NOW case that Federal antiracketeering laws could not properly be applied to pro-life protest groups who admittedly had not engaged in any activities covered by those laws with respect to the targets of their protests. So while General Pryor may have criticized Justice Souter, they do not always disagree when it comes down to interpreting the law.

Let me say this. A nominee is not an extremist—or should I put the word ''extremist'' in quotes because it seems to be a special word that is used so often by our colleagues—a nominee is not an extremist when the positions he has taken have been consistently supported by Supreme Court majorities. We know who the extremists are, and it isn't General Pryor.

We will hear more about these cases, and I'm not saying Bill Pryor has won all of these arguments at the Supreme Court. Not even the best lawyers can win them all, and he did lose a couple in this last session. But to say that Bill Pryor is ''out of the mainstream,'' when he has been such a successful advocate for his State in the Nation's highest Court, is plainly wrong.

Anybody who makes that argument should think twice before they make that type of argument.

We are in the middle of a slow walk here, trying to make the Senate look bad—not by Republicans but by the other side. Frankly, to complain about double-tracking important things like a circuit court of appeals judgeship, the third branch of Government in our society, I think is hitting a little bit below the belt.

It is certainly not unusual for cloture votes on judgeship nominees when the other side is filibustering for the first time in history Federal judicial nominees. I made the mistake of saying the Fortas nomination was the only filibuster up until now. I was wrong. I was corrected by none other than former Senator Robert Griffin who led the fight against Fortas. He said: We weren't filibustering, and they knew it. They knew we had the votes to beat them up and down and they are the ones who called for the cloture vote, which they barely won. They only had 45 votes, and there were 12 who weren't there, many of whom were going to vote against Fortas for justifiable reasons.

So these filibusters going on now are the only ones we've ever had in the Senate. My colleagues on the other side are fond of saying: There have been 140 Bush judges confirmed by us and only two have been filibustered. That is two too many. Constitutionally, that is two too many. One is one too many. I have to admit there were a few on our side during the Clinton years who wanted to filibuster some of those judges. I personally stopped them with the help of the leadership and others who thought it through that we should not be filibustering judges. It is the wrong thing to do. It should not be done, but it is being done here.

Mr. SANTORUM. Mr. President, will the Senator yield?

Mr. HATCH. If the Senator will just wait for a few more minutes, I want to make a point on Rule 4. For the life of me, I can't understand how anybody reading the Judiciary Committee's Rule 4 would interpret it any differently than the way I did. I was surprised to see my comments during the Bill Lan Lee nomination used against me. What happened there was, I was Chairman. We had the votes to stop the nomination. The Democrats didn't want us to stop the nomination because it would have been embarrassing and might have made it more difficult for them to recess-appoint Lee, who I would have supported for any other job in Government but not that one. Because I knew he would get there and he would use the power of the civil rights office to bring litigation against communities, municipalities who would have to give in rather than spend millions of dollars in defense fees and accept full scale racial quotas. My fears were confirmed. Because they recess-appointed him and he did bring that kind of litigation.

But with the Lee nomination, the Democrats started a filibuster of their own nominee. There was no reason for them to make any arguments. I would have given them a vote up or down right there. They started the filibuster. I, in graciousness, agreed not to have a vote. I have to admit I myself was in error by making some of the statements I did because I didn't realize the importance of this, nor had I even looked at Rule 4. But let's look at this Rule.

It says: ''The chairman shall entertain. . . .'' That means this is a rule that forces the chairman to entertain a nondebatable motion to bring a matter before the committee to a vote. It is a way of forcing the chairman to give a vote that you could not otherwise give if the chairman decided not to do it.

''The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote if there is objection to bringing the matter to a vote without further debate''—a rollcall vote, in other words. If the chairman refuses, they can then demand a rollcall vote of the committee to be taken. It is nondebatable. It has to happen. And ''debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, one of which must be cast by the minority.''

Anybody with brains can read that and say: That is a rule that forces a recalcitrant chairman to have to call a vote. But any competent person reading that can also conclude, as have I, having consulted with the two Parliamentarians beforehand, that a chairman cannot be foreclosed from his right to call a vote. Because if that were the rule, that means the minority would always control whether there would ever be a vote on a judge. That can't possibly be the rule, though that is what Democrats now are trying to say it is, with regard to the Committee's vote on General Pryor.

We are all well aware by now that Democrats invoked the Judiciary Committee's rule 4 to try to block a committee vote on General Pryor's nomination. Their interpretation of this rule was and is simply incorrect, and let me explain why.

Rule 4, entitled ''Bringing a Matter to a Vote,'' was clearly intended to serve as a tool by which a determined majority of the committee could force a recalcitrant chairman to bring a matter to vote. In fact, the rule provides, ''The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote.'' On July 23, there was no motion to bring a matter before the committee to a vote. In fact, there was an objection to voting, which I overruled. Thus, on its face, rule 4 was inapplicable to the Pryor nomination.

If we followed the interpretation that Democratic members of the committee urged, it would mean that the committee minority would essentially control the committee's agenda. Essentially, the committee's chairman, on behalf of the majority, could not bring any nomination or piece of legislation to a vote without the affirmative vote of at least one member of the minority. So the chairman would have no right to call for a vote—the minority could restrict that right at their discretion.

No chairman would suffer such limitations on his power. The limitation that exists in rule 4 as properly interpreted is entirely reasonable: that all members of the committee's majority, plus one minority member, can force the committee to have a vote over the objection of the chairman—who, in that case, clearly would not be representing his committee's majority. Rule 4 does not, as Democrats, would currently, expediently, have it allow the minority to prevent a vote. Rule 4

does not authorize filibusters in the Judiciary Committee.

Despite claims to the contrary, there has been no inconsistency in the interpretation of this rule. During the Clinton administration, in an effort to prevent the defeat in committee of a controversial Justice Department nominee and spare both committee Democrats and the administration considerable embarrassment, I chose not to exercise the inherent power that I and all committee chairmen have to bring a matter to a vote. President Clinton ultimately made a recess appointment of the nominee. In retrospect, my graciousness to the other side, and my reliance on rule 4 to accomplish this was admittedly not the best course of action. I nevertheless believe that I had the power to bring that matter to a vote, and that I used the discretion of the chairman to decide not to do so.

In short, there was no violation of committee rules or process in bringing the Pryor nomination to a vote on July 23, and any argument to the contrary was merely a last-ditch effort to prevent the full Senate from considering it.

Unfortunately, that effort continues, in a manner equally offensive to the ultimate rules that govern the Senate, the U.S. Constitution.

The fact is, this was the fifth markup that General Pryor was on, having had his confirmation hearing on June 11. And there were continual Democratic efforts to try and thwart these markups every time. I went along with a number of those efforts just out of graciousness. But on July 23 everybody knew we were going to vote because at the prior markup they invoked the two-hour rule, the Democrats did, so that we couldn't possibly, during the time the Senate was in session, vote on Mr. Pryor.

I said: Well, then we will meet after the Senate goes out, which would get around the two-hour rule. That meant about 9 o'clock at night that night, the Thursday before we finally voted. Everybody knew I had the votes. Everybody knew I was going to go ahead. We gave them all day to resolve any problems they had in this so-called ''investigation'' which is as phony as any investigation I have ever seen. By the time we got ready, nobody told me about this, but by the time we got ready for the vote or for the Senate to go out of session and for us to meet—and we worked all day to make sure we would have a quorum—I was informed that there was a personal exigency that existed, a legitimate personal exigency, that was known about earlier in the day, and I agreed to not continue the markup.

I put it over then until the next Wednesday, a full week, and said: Get the staffs together, interview the four witnesses you want to, interview General Pryor in the process, but next Wednesday we are going to vote. There have been comments that our staff stalled that. That is not true. I believe the distinguished Senator from Massachusetts tried to make that point. That is not true.

As a matter of fact, the Democrats' staff refused to interview or ask questions of Mr. Pryor who could have easily answered them all, and would have, and in fact already had answered all of these questions at his hearing and in writing. It was a phony ''gotcha'' type of a situation which Democrats on the Judiciary Committee are putting nominees through.

Let me talk about the religious problem. I am getting a little tired of this. The outside groups have been outrageous with the smears they have brought upon Republican judicial nominees. If you made one mistake in your life or what they perceive to be a mistake, you are going to be smeared because of it. That perceived mistake is going to be enough for these groups to try to ruin your whole career. The tactics used against Judge Kuhl are a perfect illustration. Her whole career she has had the support of Democratic and Republican judges and everybody else in California who really counts, it seems to me, as far as judges are concerned. They found one thing they can beat into the ground, they think. I don't think even that is valid. I think we can rebut that case. And yet they are going to stop this brilliant woman who has a well-qualified rating, their gold standard, from the American Bar Association.

What is particularly offensive is what the outside groups have done against some of our nominees because of religious beliefs. By the way, throughout the extensive, lengthy, one-of-a-kind hearing on Judge Pryor, there were consistent questions about his deeply held beliefs. This has caused a lot of people to become very upset.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. SANTORUM. Will the Senator from Utah yield for a question?

Mr. HATCH. I am sorry. I am happy to yield for a question without losing my right to the floor.

Mr. SANTORUM. I thank the Senator from Utah because he has hit on a point that is deeply disturbing to me as a member of the Senate. I understand the Constitution talks about, we shall establish no religion, and that is generally termed, in many cases, the separation of church and State, although the words ''separation of church and State'' do not appear in the Constitution.

What appears to be going on in the Judiciary Committee by Members of the other side of the aisle is not a separation of church and State, but a separation of anybody who believes in church and faith from any public role. I do not believe that is what the Constitution was founded to do. I listened to the comments of the Senator from California who said because of General Pryor's ''strongly held beliefs'' basically he cannot be impartial.

So if you have strongly held religious beliefs, because of your strongly held religious beliefs——

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

Mr. SANTORUM. I will not. Because of those beliefs that are referred to continually, the ''strongly held beliefs''——

Mr. DURBIN. Mr. President, I have a——

The PRESIDING OFFICER. The Senator from Utah has the floor and the Senator has yielded for a question to the Senator from Pennsylvania.

Mr. DURBIN. Mr. President, parliamentary inquiry.

Mr. SANTORUM. Are the beliefs that are referred to—

Mr. DURBIN. Mr. President, parliamentary inquiry.

Mr. SANTORUM. Mr. President, the Senator yielded to me for a question, which I am about to ask.

Mr. DURBIN. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. DURBIN. If a Member of the Senate characterizes the words of another Member of the Senate incorrectly, can those words be taken down?

The PRESIDING OFFICER. There is no such right.

Mr. DURBIN. I thank the Chair.

Mr. SANTORUM. I ask the Senator from Utah, when the other side uses the term ''deeply held beliefs'' over and over again, which we have heard on certain issues, would the Senator from Utah characterize what those ''deeply held beliefs'' might pertain to, and on what issues, and what they might tie to from the perspective of religious beliefs?

Mr. HATCH. At least in one instance over and over it was on the issue of abortion. Several Democrats asked questions about that.

Mr. SANTORUM. With respect to abortion and Mr. Pryor's beliefs, if the Senator from Utah will allow me, I would like him to comment on a letter just received today, written by Carl Anderson, who is with the Knights of Columbus. I ask unanimous consent that the letter be printed in the RECORD.

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

KNIGHTS OF COLUMBUS,
New Haven, CT, July 30, 2003.

Hon. ORRIN HATCH,
Chairman, Senate Judiciary Committee, U.S. Senate.

DEAR SENATOR HATCH: I am writing to express concerns as to the way the nomination of Alabama Attorney General Bill Pryor for the federal appeals court in Atlanta is being handled in the Senate.

Many have questioned Mr. Pryor's fitness for this position because of his ''deeply held beliefs,'' in particular his opposition to abortion. Yet this ''deeply held belief'' is grounded in Mr. Pryor's adherence to his Catholic faith, which unequivocally declares abortion to be a grave evil.

Raising Mr. Pryor's ''deeply held beliefs'' in terms of his qualifications to serve on the

federal bench thus suggests a de facto religious test for public office, something clearly prohibited by the Constitution. Of even more concern, it comes perilously close to suggesting that Catholics who faithfully adhere to their church's teaching on abortion, and perhaps other public moral issues, are unfit to serve their country in the federal judiciary.

Those who fault Mr. Pryor's ability to serve on the federal bench argue that his deeply held beliefs preclude him from judging and applying the law impartially. In effect, they are trying to put Mr. Pryor in the very uncomfortable and very unjust position of choosing between following his faith or serving his country. No candidate for any public office should be put in such a position. As Attorney General of Alabama, Mr. Pryor has already demonstrated an unquestioned record of applying the law impartially. He has already shown that one can be a faithful Catholic, with ''deeply held beliefs'' and still render unimpeachable service to his country and fellow citizens.

Perhaps it is worth remembering on this occasion that many distinguished jurists have dissented from the Supreme Court's decision in Roe v. Wade including the current Chief Justice of the United States and former Justice Byron White. To suggest that such jurists are unfit to serve on the Federal Bench does a disservice to the confirmation process itself. Moreover, it is worth reiterating that the Catholic Church teaches that abortion is unjust, not as a matter of faith, but as a matter of natural justice which obligates all citizens regardless of religious belief or lack thereof. This is attested to by the many persons of diverse religious belief or none at all who find abortion to be gravely unjust.

As head of the world's largest Catholic fraternal organization and as a former member of the United States Commission on Civil Rights, I am dismayed that the course of Mr. Pryor's nomination compels me to make a point which by now should be obvious: a good Catholic can also be a good public servant. Much as I would wish otherwise, a continuation of the trend that critics of Mr. Pryor's nomination have set in motion will compel American Catholics to face religious bigotry of a kind many of us thought to be extinct in this nation. I urge that Mr. Pryor be judged solely on his ability, his qualifications and his judicial temperament.

Respectfully,

CARL A. ANDERSON,
Supreme Knight.

Mr. SANTORUM. I want to refer to a couple of paragraphs and I want the Senator to comment, because this is the point that I think is very important. There is a code word going on here—code words. When you hear the term ''deeply held beliefs''—I know the Senator from Illinois was upset when I used the term ''religious'' as a characterization. I think it is a completely accurate characterization of exactly what is going on. I am not alone. I will read a portion of the letter:

Many have questioned Mr. Pryor's fitness for this position because of his ''deeply held beliefs,'' in particular his opposition to abortion. Yet, this ''deeply held belief'' is grounded in Mr. Pryor's adherence to his Catholic faith, which unequivocally declares abortion to be a grave evil.

I am ending the quotation from Mr. Anderson's letter, and I just suggest that it is obvious to anyone that this code word is an antireligious bias—not an antireligious bias if you don't hold your faith deeply, but only if you do. Would the Senator from Utah care to comment on this letter I just quoted briefly from?

Mr. HATCH. First, I have seen the letter dated July 30, 2003, which I believe the Senator has put into the RECORD. The first time I have seen it is tonight.

Mr. SANTORUM. Yes, the July 30 letter.

Mr. HATCH. Right. I am concerned about this. I know some of these outside groups have been doing this regularly. I personally do not believe the distinguished Senator from California is—and I hope none of the other Democrat Senators on the committee are—against Mr. Pryor because of his religious beliefs. But I have to admit that people all over the country have been calling me and talking to me and saying, how could it be anything else? People are drawing that conclusion, and I will be honest with you, I am concerned about it.

Mr. SANTORUM. If the Senator will yield for a further question, I want to read the next paragraph and get his comment:

Raising Mr. Pryor's ''deeply held beliefs'' in terms of his qualifications to serve on the Federal bench thus suggests a de facto religious test for public office, something clearly prohibited by the Constitution.

Would the Senator from Utah agree that the religious test for holding an office with the Government of the United States of America would be unconstitutional?

Mr. HATCH. There is no question about that. We all have to agree that our Constitution states no religious test shall ever be required as a qualification to any office of public trust in the United States. I don't believe any Senator would intentionally impose a religious test on the President's judicial nominees. I do not think any Senators are guilty of anti-religious bias. However, I am deeply concerned that some are indirectly putting at issue the religious beliefs of several judicial nominees.

I will give you one illustration. During the Pryor hearing, General Pryor's religion was an issue—and this is why I have raised it, which I have never done before. One Senator accused General Pryor during the hearing of ''asserting an agenda of your own, a religious belief of your own.'' In his opening statement, another Senator stated:

''In General Pryor's case, his beliefs are so well known, so deeply held that it is very hard to believe that they are not going to deeply influence the way he comes about saying 'I will follow the law,' and that would be true of anybody who had very deeply held views.''

The only deeply held views that I know outside of belief in the law would be his own personal religious beliefs. I will just say this on another point. On the subject of Roe v. Wade, Senator SCHUMER said, ''I for one believe that a judge can be pro-life, yet be fair, balanced, and uphold a woman's right to choose. But for a justice to set aside his or her personal views, the commitment to the rule of law must clearly supersede his or her personal agenda. . . . But based on the comments Attorney General Pryor has made on the subject, I have some real concerns that he cannot because he feels these views so deeply and so passionately.''

I don't know how you read it any other way.

Another Senator told General Pryor:

I think the very legitimate issue at question with your nomination is whether you have an agenda, and that many of the positions you have taken do not reflect just an advocacy, but a very deeply held view and a philosophy, which you are entitled to have, but you are also not entitled to get everyone's vote.

As you know, General Pryor is openly pro-life.

Mr. SANTORUM. If the Senator will yield, does the Senator from Utah, who I know is not Catholic, know that as part of the Catholic faith, one of the central teachings with respect to faith and morals is that it is not an option under the Catholic church doctrine to be a faithful Catholic and not be pro-life. It is a core teaching of the church. It is not an optional teaching or a recommended teaching; it is a core teaching of the church. So to be a faithful Catholic, according to the church, someone has to embrace this opposition to abortion. Is the Senator aware of that?

Mr. HATCH. Yes. I am so advised. I have studied the Catholic faith and I respect it deeply, as I do all religions.

Mr. SANTORUM. So according to what the Senator has just said, someone who considers oneself a faithful Catholic, faithful to the core teachings of the Catholic church, which leaves no leeway on the issue of abortion, under that understanding, someone who has a deep faith and understands that with deep faith as a Catholic comes the requirement to be against abortion, that as a result of that deep faith and as a result of that deep faith in Catholicism, having to subscribe to the church's teaching on abortion, would that not lead, in a sense, to a prohibition by some Members of having anybody who is a faithful Catholic as a member of the judiciary?

Mr. HATCH. I cannot speak to that. All I can say is that I will take the Senator's statement at face value, as I know he is a practicing member of the Catholic faith, and I respect him for that. I know he is very sincere, and I know he has even written about it. But I am concerned.

Three of the people we have been told will be filibustered are traditional pro-life, Catholic conservatives. Certainly, Pryor is one of them. Kuhl is another. Holmes is another. It is a matter of great concern. I have to say that these inside-the-Beltway outside groups will use anything; they will distort a person's record. It is abysmal what they are doing, and they are well heeled to the tune of millions of dollars, which they spend spreading this bile all over the Senate. Unfortunately, I believe there are some in this body who do not decry what they are doing.

Mr. SANTORUM. Mr. President, will the Senator yield for another question?

Mr. HATCH. I will be happy to yield for another question without losing my right to the floor.

Mr. SANTORUM. Mr. President, I just described what is my understanding as a Catholic of what the teachings of the church are and what the responsibilities as a faithful Catholic are as a member of the church. I also understand the oath of office you take and the role that you play as a civil servant in a government and that you have an obligation to serve and to adhere to the law, particularly when you are sworn to uphold that law.

Are there any examples where Attorney General Pryor upheld the law even though he, as a Catholic, as a person of deep beliefs, went ahead and followed the law even though his personal viewpoints may have been different?

Mr. HATCH. I think there are all kinds of examples. Let me go through a few, if I can. Hopefully, this will be helpful in what the good Senator has asked for.

General Pryor's record speaks with far more authority and with much greater eloquence than the fulminations against him. His record of enforcing the Supreme Court dictates on abortion is unquestioned. He has enforced them all. Despite criticizing them all as a traditional pro-life, Catholic conservative, he has criticized abortion but he has upheld the law.

Although he has been attacked for his federalism arguments before the Supreme Court, the Supreme Court sided with him in most of those cases. Arguing that Congress does not have the power that it has assumed through certain legislative acts is not activist or radical. It is principled, entirely consistent with our constitutional separation of powers, and it is General Pryor's duty as State attorney general.

In all the federalism cases he has argued, he advocated that only certain portions of Federal laws were unconstitutional. In all cases, remedies remained available for aggrieved parties or the Federal Government. I cited some of these cases earlier.

Let me give another illustration. His critics have also attempted to portray him as an official without the respect for the separation of church and State. Again, it is simply beyond dispute that his record proves his repeated ability to enforce the law regardless of his strong personal religious beliefs.

In an effort to defeat challenges to school prayer and the display of the Ten Commandments in the Alabama Supreme Court, both the government that appointed General Pryor and Alabama Chief Justice Roy Moore urged General Pryor to argue that the Bill of Rights does not apply to the States.

General Pryor refused, even though his personal beliefs were different, and he argued the case on much narrower grounds despite his own deeply held Catholic faith and personal support for both of those issues.

General Pryor has always been attacked for his statements urging modification or repeal of section 5 of the Voting Rights Act. However, despite General Pryor's well-documented concerns about section 5 of the Voting Rights Act, he has vigorously enforced all provisions of the act. He successfully defended before the Supreme Court several majority-minority voting districts approved under section 5 from a challenge by a group of white Alabama voters. He feels deeply about these issues.

He also issued an opinion that the use of stickers to replace one candidate's name for another on a ballot requires preclearance under section 5. Again, General Pryor enforced the law despite its conflicts with his beliefs.

Despite the distortions, half-truths, and outright falsehoods we have heard about him from the usual leftist inside-the-Beltway interest groups, General Pryor is a diligent, honorable, faithful man whose loyalties as a public servant have been to the law and its impartial administration.

He has told us under oath he will continue to follow the law, just as he has demonstrated in his distinguished career in Alabama. We should be proud to give his nomination an up-or-down vote.

Throughout his hearing, it was one question after another on abortion—one question after another—and he made it clear that as much as he thinks that the outcome of the case of Roe v. Wade is an abomination, because it has resulted in the death of millions of unborn children—and he was very straightforward about it, very honest about it, and was complimented by my colleagues for his honesty, yet they will not accept his honesty on this topic—he said he would enforce Roe v. Wade, which is the law.

Mr. SANTORUM. Mr. President, isn't there a case of the partial-birth abortion law in Alabama where he actually gave advice that would be contrary to what his personal beliefs are with respect to the issue of abortion?

Mr. HATCH. After the Supreme Court's decision in Stenberg v. Carhart, he upheld that law by ordering state officials not to enforce the conflicting Alabama partial-birth abortion law. Earlier, he had enforced Alabama's partial-birth abortion law narrowly, to ensure consistency with Supreme Court's dictates in Planned Parenthood v. Casey. Even though he disagrees violently with both of those cases from a personal religious standpoint, but he enforced and upheld those laws, in the face of criticism from many of his conservative friends in Alabama.

Let me read one other item. At his hearing, I asked him this question:

So even though you disagree with Roe v. Wade, you would act in accordance with Roe v. Wade on the Eleventh Circuit Court of Appeals?

This was his answer:

Mr. PRYOR. Even though I strongly disagree with Roe v. Wade, I have acted in accordance with it as attorney general and would continue to do so as a Court of Appeals judge.

Chairman HATCH. Can we rely on that?

Mr. PRYOR. You can take it to the bank, Mr. Chairman.

To be honest with you, that is the way he is, and he is being condemned for that.

I have to say that some of my colleagues on the other side have become tremendously annoyed and hurt by the issue of religion being brought up in this matter, but the attacks on personal beliefs came originally from these inside-the-Beltway groups. They are well heeled, with money coming out of their ears, hiring all kinds of far left liberal lawyers to make these smear attempts and, frankly, that is what is distorting this whole process.

I suggest to my friends on the other side, they are going to have to start some day standing up to these people, but they do not seem to be able to do it.

Frankly, during the Clinton years, I stood up to some of the right wing groups that were occasionally trying to distort somebody's record. We did not see anywhere near what we are seeing today but I stood up. I am not asking them to do something I did not do.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. HATCH. I will be glad to yield without losing my right to the floor.

Mr. SESSIONS. I remember a conservative group demanded of Senator HATCH, with regard to Clinton nominees, that he sign a Hatch pledge. I ask the Senator how he handled outside conservative pressure groups at that time?

Mr. HATCH. Mr. President, as my colleague knows, I had to stand up to some in my own caucus. Not many. There were some, one or two, who wanted to filibuster President Clinton's nominees. As the Senator will recall, I stood up to that and said we are not going to filibuster judicial nominees. It is not right, and I believe it is constitutionally unsound.

Some of the outside groups were sincere but they wanted to—I believed them to be sincere but wrong—distort some of these matters, and I refused to allow them to do it. They demanded to testify in a variety of cases, and I told them no, we are not going to denigrate the judicial process with that type of stuff.

Mr. SESSIONS. If the Senator will yield for a further question?

Mr. HATCH. I am happy to yield without losing my right to the floor.

Mr. SESSIONS. I note that the Senator made quite clear that elected Senators have the responsibility to decide matters, and they cannot be driven by forces outside. We have to do it on the facts and the law, and he has been honorable and consistent on that. He deserves great praise. Some of the criticism that has come his way from those who are now altering the historic ground rules of confirmation is unjust and wrong.

As a former attorney general of Alabama and knowing that the attorney general had the power in Alabama to direct district attorneys on how to enforce certain Alabama laws, I ask the distinguished chairman of the Judiciary Committee is he aware that even though Attorney General Pryor strongly believes that partial-birth abortion is one of the worst forms of abortion of all, that he wrote a letter directing district attorneys to narrowly construe an Alabama partial-birth abortion statute because he had concluded under the Supreme Court law that parts of it was unconstitutional?

Mr. HATCH. Well, the Senator is right.

He is a very serious practicing Catholic. He despises Roe v. Wade. He makes very strong and principled arguments against it. He did not mince any words when he was asked, Did you call it an abomination? And he said: Yes, I did, sir.

When they asked why, he said he called it an abomination because, words to the effect, he believes that it led to the deaths of millions of unborn children. Yet when it came down to enforcing the law on partial-birth abortion, that he despises, he enforced the law, and he directed his prosecutors in the State to do likewise.

I do not know whether we can find any better people than that. There are a lot of politicians who have been attorneys general who I do not think would have done that in the face of their personal beliefs, but he did because he is dedicated to the law. He knows if one does not uphold the law, even if they disagree with it, it would not be long until we would not have any laws. The Constitution would go itself, and he understands that. He is a brilliant man, graduated magna cum laude from Tulane, which is a fine law school, and was editor in chief of the Law Review, something that very few people have the privilege of doing, and that is because he was one of the best students in his class.

Frankly, he has more than shown an aptitude to the law and an ability to follow the law.

Mr. SESSIONS. If the Senator will yield for another question.

Mr. HATCH. Without losing my right to the floor, I will be happy to yield.

Mr. SESSIONS. Is the Senator aware, being an Alabama official myself and keeping up with these things, that when Attorney General Pryor, not required to do so but following what he believed was the proper procedure, directed the district attorneys who would be enforcing this partial-birth abortion law to construe the statute narrowly, that he was criticized by pro-life groups, sincere, wonderful people, and one went so far as to say that his decision had gutted the partial-birth abortion law?

Mr. HATCH. That is exactly right. He took a lot of flack for it and he believed the way they did, but he also made it clear that that is the law and that he was going to follow it. He followed it as an elected political official.

Now, if he can follow the law impartially as an elected political official, imagine the honor he would bring to the bench, where it's his job to be impartial. He did not have to do it as an elected political official, although I would not have respected him had he not, but as a judge, I think we have more than ample evidence that this man would follow the law regardless of his personal beliefs. Yet he has been smeared by the outside groups on his personal beliefs. It is just that simple.

Mr. SESSIONS. Mr. President, one more question.

Mr. HATCH. Without losing my right to the floor.

Mr. SESSIONS. I have researched his record and background. I find that even though he does firmly believe that abortion is an immoral practice, that other than the matter I just raised about directing on partial-birth abortion not to enforce parts of the law, he has not taken any action in any way to use the power of his office to undermine the law of the Supreme Court on that matter. I just wonder if the Senator would agree with that?

Mr. HATCH. I do agree with that. The Senator knows Bill Pryor better than anybody. He worked for the distinguished Senator when he was attorney general. I am absolutely amazed at how many Democrats and people of diversity and others in Alabama are supportive of him. The people who knew him best are the people who support him. The people of Alabama know him best. Yet we are going to second-guess that, for political reasons?

Mr. SANTORUM. Will the Senator yield?

Mr. HATCH. I am happy to yield, without losing my right to the floor.

Mr. SANTORUM. To get to the rest of this letter by Carl Anderson, who is the head of the Knights of Columbus nationwide, I want to read the concluding paragraph and ask the Senator to comment as to whether he agrees with Mr. Anderson in his conclusion as to what is going on with this nomination. He says this:

> As head of the world's largest Catholic fraternal organization and as a former member of the United States Commission on Civil Rights, I am dismayed that the course of Mr. Pryor's nomination compels me to make a point which by now should be obvious: a good Catholic can also be a good public servant. Much as I would wish otherwise, a continuation of the trend that critics of Mr. Pryor's nomination have set in motion will compel American Catholics to face religious bigotry of a kind many of us thought to be extinct in this nation.

Does the Senator agree that such continuation of activity could lead to such bigotry?

Mr. HATCH. Well, I believe it can be, and I believe there is some from the outside groups. I do not think there is any question. I would not want to attribute that to any of my colleagues on the Judiciary Committee, although I have to admit this issue of abortion is becoming a litmus test issue to Democrats, that is pro-abortion. I think that is wrong. I remember what the media did to Republicans during the Reagan administration, continually trying to say there was a litmus test. I know there was not because the person who vetted all the judges is a former staffer of mine who is now on the Michigan Supreme Court. I know it is not being done by this administration. But literally, Democrats are making abortion a litmus test issue.

The Democrats are fond of saying, yes, but we have passed all kinds of Bush judges, 140 of them so far. Well, they cannot stop them all. So they selectively pick people like General Pryor who clearly has very strongly held views but who clearly has abided by the law. They ignore that he abided by the law and attack him on his strongly held views. In large measure, it comes down to the issue of abortion because he differs with them on the policy issue of abortion.

Mr. SANTORUM. If the Senator will yield for an additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. Is the Senator familiar with a letter written by Austin Ruse, president of the Catholic Family and Human Rights Institute, which was sent yesterday?

Mr. HATCH. I just saw it tonight, so I am familiar. I have not read it in detail, but I am familiar with it.

Mr. SANTORUM. Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

Mr. SANTORUM. I say to the Senator from Utah that I wanted to bring up this letter. This is not the only Catholic group that has expressed concern about what is code worded as ''deeply held beliefs'' but seems to be a little stronger than that. I will read the second paragraph of this letter and ask the Senator to comment again on this:

> I think of the young mother, struggling to raise her children in what is a challenging culture. She raises them to be good citizens and good Catholics. What should this mother tell her children? ''Sorry, in order to serve our government, you will have to shed your Catholic beliefs.'' Putting Catholics in this position is shameful and not a proper measure of our great land?

I ask the Senator if he has any thoughts on this issue?

Mr. HATCH. This is the first time I have seen this letter. To him, this is a very important issue. The views he expresses are drawn from what he's heard at the hearing and the markup. Reasonable people can draw these conclusions from the markup, from the debate.

It is coming down to where abortion is the be-all and end-all issue to my colleagues on the other side. Sure, they cannot vote against everyone. I don't know how many of these people are pro-life or pro-choice. I never ask anyone that.

The fact is, I can see why people are drawing this conclusion. I will give a

few other reasons they are drawing that conclusion before we are through here tonight.

Mr. SANTORUM. If the Senator will yield for another question, I ask unanimous consent to have printed an article by Bishop Charles J. Chaput, Archbishop of Denver, written as a result of this nomination. The article talks about a friend of his in Alabama and the fact there were not very many Catholics in Alabama in the 1960s when he was growing up and how Alabama has changed to the point where they can elect a Catholic as their attorney general.

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

[From www.archden.org, July 30, 2003]

SOME THINGS CHANGE, SOME THINGS REALLY DON'T

Some things change, and some things don't.

In the summer of 1963, a friend of mine—she was just 11 at the time—drove with her family to visit her sister, who had married and moved away to Birmingham, Ala. Stopping for gas in a small Alabama town on a Sunday morning, her father asked where they could find the local Catholic church.

The attendant just shrugged and said, ''We don't have any of them here.''

The family finished gassing up, pulled out of the station—and less than two blocks away, they passed the local Catholic church.

Most people my age remember the '60s in the South as a time of intense struggle for civil rights. Along with pervasive racial discrimination, Southern culture often harbored a suspicion of Catholics, Jews and other minorities. Catholics were few and scattered. In the Deep South, like Alabama, being Catholic often meant being locked out of political and social leadership.

Today, much of the old South is gone. Cities like Atlanta and Raleigh-Durham are major cosmopolitan centers. Time, social reform and migration have transformed the economy along with the political system. The South today is a tribute both to the courage of civil rights activists 40 years ago, and to the goodness of the people of the South themselves.

Most people, most of the time, want to do the right thing. And when they change, they also change the world they inhabit, which is one of the reasons why the Archdiocese of Atlanta can now draw thousands of enthusiastic Catholic participants to its Eucharistic Congress each year in a state where Catholics were once second-class citizens. It also explains how a practicing Catholic, William H. Pryor, can become Alabama's attorney general—something that was close to inconceivable just four decades ago.

I've never met Mr. Pryor, but his political life is a matter of public record. He has served the State of Alabama with distinction, enforcing its laws and court decisions fairly and consistently. This is why President Bush nominated him to the 11th U.S. Circuit Court of Appeals, and why the Senate Judiciary Committee approved him last Wednesday for consideration by the full Senate.

But the committee debate on Pryor was ugly, and the vote to advance his nomination split exactly along party lines. Why? Because Mr. Pryor believes that Catholic teaching about the sanctity of life is true; that the 1973 Supreme Court Roe v. Wade decision was a poorly reasoned mistake; and that abortion is wrong in all cases, even rape and incest. As a result, Americans were treated to the bizarre spectacle of non-Catholic Senators Orrin Hatch and Jeff Sessions defending Mr. Pryor's constitutionally protected religious rights to Mr. Pryor's critics, including Senator Richard Durbin, an ''abortion-rights'' Catholic.

According to Senator Durbin (as reported by EWTN), ''Many Catholics who oppose abortion personally do not believe the laws of the land should prohibit abortion for all others in extreme cases involving rape, incest and the life and the health of the mother.'' This kind of propaganda makes the abortion lobby proud, but it should humiliate any serious Catholic. At a minimum, Catholic members of Congress like Senator Durbin should actually read and pray over the ''Catechism of the Catholic Church'' and the encyclical ''Evangelium Vitae'' before the explain the Catholic faith to anyone.

They might even try doing something about their ''personal opposition'' to abortion by supporting competent pro-life judicial appointments. Otherwise, they simply prove what many people already believe—that a new kind of religious discrimination is very welcome at the Capitol, even among elected officials who claim to be Catholic.

Some things change, and some things don't. The bias against ''papism'' is alive and well in America. It just has a different address. But at least some people in Alabama now know where the local Catholic church is—and where she stands—even if some people in Washington apparently don't.

Mr. HATCH. This article reads in part:

I have never met Mr. Pryor, but his political life is a matter of public record. He has served the State of Alabama with distinction, enforcing its laws and court decisions fairly and consistently. This is why President Bush nominated him to the 11th U.S. Circuit Court of Appeals, and why the Senate Judiciary Committee approved him last Wednesday for consideration by the full Senate.

But the committee debate on Pryor was ugly, and the vote to advance his nomination split exactly along party lines. Why? Because Mr. Pryor believes that Catholic teaching about the sanctity of life is true; that the 1973 Supreme Court Roe v. Wade decision was a poorly reasoned mistake; and that abortion is wrong in all cases, even rape and incest. As a result, Americans were treated to the bizarre spectacle of non-Catholic Senators Orrin Hatch and Jeff Sessions defending Mr. Pryor's constitutionally protected religious rights to Mr. Pryor's critics, including Senator Richard Durbin, an ''abortion-rights'' Catholic.

He concludes with:

Some things change, and some things don't. The bias against ''papism'' is alive and well in America. It just has a different address. But at least some people in Alabama now know where he local Catholic church is—and where she stands—even if some people in Washington apparently don't.

I ask the Senator from Utah if he has seen that article.

Mr. HATCH. I had not seen it before tonight, that I was aware of. I had been told the Catholic bishop had written this article. I can see why he has drawn this conclusion. I can see why anyone would.

I hear the moaning and groaning and scheming, but I happen to be a member of the Church of Jesus Christ of Latter-day Saints. I belong to the only church in the history of this country that had an extermination order out against it, where our people were brutally murdered and driven from State to State leaving trails of blood.

I don't like religious discrimination in any way. I can see why people are drawing these conclusions from this debate. I can see why people draw such conclusions when you start attacking a man because he has deeply held beliefs. Earlier, I read one statement from Pryor's hearing, questioning his religious beliefs. It was made; and anyone with brains would say, what are his deeply held beliefs? He is a traditional pro-life Catholic conservative. And I guess that is not a good thing to be if you're before this body seeking confirmation to the federal bench.

I think it is a good thing to be. I don't think it is bad to be a liberal pro-life Catholic. I think it is important to live your religion, regardless of what religious persuasion you are. I understand religious discrimination. The name of my church is the Church of Jesus Christ of Latter-day Saints, yet I am unacceptable in certain groups because they don't think we are Christians. I will match my Christianity up against anyone's. I read the Bible all the time. I try to read it from beginning to end every year. I pretty well do that. It is the greatest book in the world. And it is the greatest literature. But I understand discrimination. Some people will not handle the music I write because they don't think I am Christian. I don't mean to bring that up here except that it applies. I understand that. I understand why people feel this way. If my colleagues on the other side don't understand it, I say shame on them.

When abortion becomes the be-all and end-all in the judicial nomination process—which is what these outside groups, almost every one of them, are committed to on the Democratic side—it is a serious issue. There are serious decent people on both sides of that issue. But when it becomes the be-all and end-all litmus test whether a person can serve—that's wrong. And don't give me the argument we have approved all kinds of people who may be pro-life. Of course, Members cannot vote against everybody.

But we are filibustering, for the first time in history, good people, judicial nominations to the Federal courts of the United States of America, for the first time in history. I know a lot of it comes down to abortion. I did not let that happen when I was chairman during the Clinton years. I don't think it should happen right now, especially somebody such as Pryor who has a reputation for obeying and standing up for the law even though he disagrees with it.

As a politician he has that reputation. I imagine if he can do it as a politician, he can do it and we can take his word on it that he would abide by the law and sustain the law of the land as a judge. Yet the principal argument against him is that he won't enforce the law regarding abortion. There are

other arguments used, all of which are false, in my opinion. This abortion issue is becoming the be-all and end-all issue for Democrats in the Senate. There is always somebody who wants to enforce an abortion litmus test, but we stopped it on our side. It ought to be stopped on their side.

Mr. SANTORUM. If the Senator will yield for another question, I sincerely thank the Senator from Utah for his yielding to me for these questions and for his very articulate defense of this nominee and the principle which I believe and I think the Senator believes in.

One of the reasons I brought the article up was, many people outside of this Chamber—not just Catholic, not just Christian, but of all faiths—are deeply concerned about what is going on in this Chamber. I thank the Senator for his willingness to stand up and to have the courage to articulate that. I make the point that he is not alone in coming to the conclusion he has come to, that many people in this Chamber have come to, that this litmus test that is being applied ultimately is a religious one.

Mr. HATCH. The practical application.

Mr. SANTORUM. Which is a very threatening thing.

I say for the record, as a pro-life Catholic, I voted for hundreds of Clinton nominees who I knew were not pro-life—hundreds of them—never voted against one of them, never filibustered any of them. I will match up my fervor in defense of human life against anyone in this Chamber. But not once did I vote against one.

Why? Because that is not my role as a Senator, as a civil servant. I know my duties under the Constitution. I know my role. I know what I am supposed to do. What we are experiencing here now is not, again, the separation of church and state but the separation from anybody who is faithful to their church from the state. That is turning separation of church and state that would cause any of the Founders to be spinning in their grave today. It is exactly what—you can call it anything you want—but that is exactly what is going on.

The greatest of the freedoms we have in this country, the greatest that any country can have, is the freedom to believe the freedom to think. Because if you don't have the freedom to think what you want and the freedom to do what you want, the freedom to speak, to assemble—the freedom to do anything else is meaningless. It is the first of all freedoms. That is under assault in this process.

I commend the Senator from Utah for standing up in defense of this.

Mr. HATCH. If my colleague will stay a few minutes longer, because I want to make one more point in this area and it needs to be made—a couple maybe.

I believe the Senator has put the letters and op-ed piece from the Catholic Leader into the RECORD.

I also ask unanimous consent to have printed in the RECORD—because these are people who are good people writing these letters. And they are just starting. An avalanche is coming. This is from the Union of Orthodox Jewish Congregations of America, July 23:

DEAR SENATOR HATCH: We write to you with regard to the Judiciary Committee's consideration of the nomination of William Pryor, the current Attorney General of the State of Alabama, to the U.S. Court of Appeals for the Eleventh Circuit.

The Union of Orthodox Jewish Congregations of America, the nation's largest Orthodox Jewish umbrella organization representing nearly 1,000 congregations nationwide, is a non-partisan, religious organization and—like most other organizations in the American Jewish community—it has been the UOJCA's longstanding policy neither to endorse nor oppose judicial nominees in the confirmation process. However, to our dismay, we have witnessed several of our community's organizations deviate from this shared policy in recent weeks and oppose the confirmation of Mr. Pryor.

Moreover, we are profoundly troubled by the manner in which this opposition has been framed. We thus feel compelled, unlike our fellow communal organizations, to remain faithful to our non-endorsement policy but express our view on a critical issue that has been raised in connection with this nomination—Mr. Pryor's personal religious faith and his capacity to serve as a federal judge in light of that personal faith.

As a community of religious believers committed to full engagement with modern American society, we are deeply troubled by those who have implied that a person of faith cannot serve in a high level government post that may raise issues at odds with his or her personal beliefs. There is little question in our minds that this view has been the subtext for some of the criticism of Mr. Pryor. We urge you and your colleagues to emphatically reject this aspersion and send a clear message that such suggestions, whether explicit or implied, are beyond the pale of our politics. In our view, Mr. Pryor's record as Alabama's Attorney General demonstrates his ability to faithfully enforce the law, even when it may conflict with his personal beliefs.

The role of religion and of religious citizens in American life was much discussed during the last presidential campaign. To our nation's credit, it was discussed in a serious and meaningful way, which revealed a national consensus favoring a society where citizens of many faiths are not only welcome in our society, but encouraged to bring their faith into our nation's ''public square.'' We urge you to ensure that the deliberations over William Pryor's nomination do not undermine the great progress we have seen on this issue so critical to America's civil society.

We pray your committee's deliberations will be fair and serve the nation well.

There are a lot of people concerned about this around here. Let me make this point. I want to respond to the concerns of my dear friend, Senator FEINSTEIN. She is one of my dearest friends in this body. I think the world of her.

She made comments about an ad that used the slogan, ''Catholics need not apply.'' I don't have a copy of it here on a poster.

She used that because she wants us to decry this ad.

Well, I am not happy with this ad.

But I can see why people have done this, because they believe that this—these debates are devolving to the point of attacking a person for his or her personal beliefs, in the case of Pryor, Kuhl, Holmes, others.

Let me respond to Senator FEINSTEIN's concerns about the ad that used the slogan ''Catholics need not apply.'' In fact, it was the liberal groups, the liberal inside-the-beltway groups, that used the slogan ''Catholics need not apply'' to argue against Republicans for supporting the Charitable Choice legislation in 2001.

Let me put one of these ads up, along with the words of the Americans United for Separation of Church and State. Here is the paragraph down here:

Ashcroft's Charitable Choice provisions allow a government-funded program to hang a sign that says ''Catholics need not apply.''

I will not read the rest of it. We will put it into the RECORD.

I ask unanimous consent that the letter be printed in the RECORD.

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

AMERICANS UNITED URGES SENATE TO REJECT ASHCROFT NOMINATION FOR ATTORNEY GENERAL

BUSH NOMINEE'S VIEWS ARE 'OUTSIDE THE MAINSTREAM,' SAYS AU'S BARRY LYNN

In written testimony submitted to the U.S. Senate Judiciary Committee, Americans United for Separation of Church and State today urged senators to reject the nomination of John Ashcroft for attorney general.

''[W]e at Americans United have come to the conclusion that Senator Ashcroft's policy positions and legal opinions are so far outside the mainstream that it is doubtful he could enforce the very laws and rights that the attorney general must protect and uphold,'' said Barry W. Lynn, executive director of Americans United. ''We call on this committee to reject his confirmation.''

In his statement to the Senate panel, Lynn noted that Ashcroft has frequently expressed contempt and disdain for the Supreme Court and its legal precedents. (Hearings on the nomination begin today.)

For example, Lynn pointed to Ashcroft's comments to the Christian Coalition in 1998, where the former Missouri Senator said, ''A robed elite have taken the wall of separation designed to protect the church and they have made it a wall of religious oppression.''

Responded AU's Lynn, ''Ashcroft's characterization of the Supreme Court as a 'robed elite' shows a lack of respect unbefitting a candidate for attorney general. It is a phrase more commonly associated with religious extremists and anti-government militias than our nation's chief law enforcer and protector of civil rights and liberties.''

Lynn also told the Senate committee that Ashcroft's legislative efforts reflect a disregard for constitutional principles.

''Senator Ashcroft's contempt for First Amendment case law is not merely rhetorical, but also took legislative form,'' Lynn said. ''During his sole Senate term, Ashcroft developed legislation called 'charitable choice,' a plan that allows religious groups to receive taxpayer funds to perform government services and then discriminate in the employment of staff people to run the program.

''Ashcroft's Charitable Choice provisions allow a government funded-program to hang

a sign that says 'Catholics Need Not Apply' or 'Unwed Mothers Need Not Apply,'" Lynn added. "Such a scheme amounts to no less than unconstitutional government-funded employment discrimination."

Lynn found Ashcroft's comments to students at Bob Jones University in 1999 particularly revealing about the attorney general nominee's commitment to government neutrality on religion. In the speech, Ashcroft said that America has "no king but Jesus."

"Such a statement shows a total lack of regard for the principle that it is the U.S. Constitution that serves as the basis for our laws and national life, not one faith tradition," said Lynn. "Our Constitution guarantees unqualified religious liberties for each of us, regardless of our beliefs."

Ultimately, Lynn argues that Ashcroft's hostility for our constitutional principles disqualify him for the position of attorney general.

"As the nation's top law enforcement officer, the attorney general must represent all Americans," Lynn noted. "He must stand for the rights of Christians, Jews, Muslims, Buddhists, and Hindus. He must advocate for those who are completely devout about religion as well as those who are totally indifferent toward it. He must understand certain things about America—that the nation was not founded on any one particular set of religious beliefs but rather was deliberately designed to extend freedom to them all. Our nation guarantees this freedom to all faiths by erecting a wall of separation between church and state.

"Senator Ashcroft views this wall as one that fosters oppression, not freedom," Lynn concluded. "By taking this position, he puts himself at odds with both the early American statesmen who built that wall—men like Thomas Jefferson and James Madison—and more importantly, the decisions of the U.S. Supreme Court. For these reasons, we respectfully ask this committee to reject John Ashcroft's confirmation as attorney general of the United States."

Americans United is a religious liberty watchdog group based in Washington, D.C. Founded in 1947, the organization represents 60,000 members and allied houses of worship in all 50 states.

Mr. HATCH. Let's go to People for the American Way. It is estimated that People for the American Way have between $12 and $30 million given to them, mainly by the Hollywood crowd and big business people, to do what they do in this town, which is to distort Republican nominees' records. This is People for the American Way. I will not read it all:

Charitable Choice, a bad choice for government and religion.

Here is the paragraph.

An Evangelical church running a government-funded welfare program could state that "Catholics need not apply," in a help wanted ad.

I do not recall any Democratic Senators expressing outrage about that. I did not see one comment about the fact that the liberals have used this language against the Charitable Choice legislation.

Whether you agree with that or whether you agree with General Pryor, or not——

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

Mr. HATCH. I am happy to yield without losing my right to the floor.

Mr. MCCONNELL. I ask the chairman of the committee if he is aware of any time in which the Senate, having set a precedent, tended to unset it lately?

Mr. HATCH. I have no doubt that we have unset precedents in this body.

Mr. MCCONNELL. My fear, I say to my friend from Utah, is that we crossed the Rubicon on the issue of filibustering judges.

Mr. HATCH. No question about that.

Mr. MCCONNELL. I can recall as recently as the last year of the Clinton administration, the chairman of the Judiciary Committee and others and myself voting for cloture on judges that we personally opposed and subsequently did oppose, even though we knew there was a chance of killing them on filibuster. I think of Paez and I think of Berzon.

Does the chairman of the committee share my view that we may have gone so far now that this would be the pattern forever in the Senate, denying judges up-or-down votes because we find them unacceptably liberal or conservative or too steeped in personal beliefs that they are willing to express before the committee?

Mr. HATCH. I have no doubt, to answer the Senator's question, if we continue down this pathway we are going to devolve to where people with strongly held religious beliefs are not going to be able to serve in this country. That is what it comes down to. I have no doubt that if we continue to violate the Constitution by allowing filibusters against—under our advise and consent mandate in the Constitution, we are going to wind up with a mess on our hands that we will not be able to repair. So we have to get out of this. I call on our colleagues on the other side to get real here.

Mr. MCCONNELL. Further, I inquire of the Senator from Utah, the chairman of the committee, whether he thinks it will now be routine for every nominee to be asked their personal beliefs on a whole range of issues, personal and religious beliefs on a whole range of issues, and be expected to answer those kinds of questions.

Mr. HATCH. I do not think we will go that far. At least while I am chairman of the committee we are not going to do that. I did ask him what his religion was, after all of these questions that were asked in a very extensive hearing where religion was put squarely in issue by the other side. I did ask him that because I wanted to establish that this had gone too far.

I don't intend to ever ask that question again. I don't think my colleagues will. The distinguished Senator from Vermont said he will never ask that question, and he criticized me for doing so. But I think it was highly justified under the circumstances, and I think we made a pretty good case tonight that it was justified, although I am sure some of my colleagues will take umbrage.

But let them take umbrage. People all over this country are starting to say there is litmus test arising. Certainly there are outside groups that are trying to smear our nominees—especially Attorney General Pryor, Judge Kuhl, and Mr. Holmes.

Mr. MCCONNELL. Mr. President, I further ask the chairman of the committee. He may well have received—I know I did and other Members of the Senate did—a letter today from William Donohue, Ph.D., who is president of the Catholic League For Religious and Civil Rights. He said, among other things, in his letter:

Some of Pryor's critics are themselves Catholic and thus resist the contention that is being opposed because of his religion. But they do so by falsely claiming that on the subject of abortion, there is more than one acceptable position for Catholics to take. They are dead wrong. Catholic teaching on abortion is unequivocal: It is gravely sinful. This is not a matter of dispute—it is a matter of doctrine that all Catholics are expected to uphold. Especially public officials.

The danger, then, is that Bill Pryor may be rejected because of his religious convictions.

I think what is so disturbing here to many of us—I am personally not a Catholic—is that you could adhere to the teachings of your church and then in effect be penalized for it even though there is no evidence that in carrying out your duties as a public official you wouldn't follow the law.

I ask the chairman: Are we being penalized for our own personal religious convictions in seeking public positions?

Mr. HATCH. There are people all over this country who are coming to the conclusion that Bill Pryor is being treated that way. Personally, if you are going to apply abortion as a litmus test, and that is his deeply held personal belief, even though he has exhibited more than an effort to obey the laws no matter what they are, I can see why people arrived at that conclusion.

I see why Mr. Donohue feels that way. This is getting to be an avalanche. The new code words for some are that, well, I don't personally believe in abortion but I believe a woman ought to have a right to choose.

Give me a break. That is a nice excuse. But that certainly is not acceptable, it seems to me, to many religions, including the Catholic faith, as has been said by these letters.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that this letter to which I referred from Dr. Donohue be printed in the RECORD.

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

CATHOLIC LEAGUE
FOR RELIGIOUS AND CIVIL RIGHTS,
New York, NY, July 25, 2003.

DEAR SENATOR: You will soon be voting on the candidacy of Alabama Attorney General Bill Pryor for the federal appeals court in Alabama. As president of the nation's largest Catholic civil rights organization, I ask that you subject him to the same standards as you would any candidate. I am also asking that you challenge any colleague of yours who may attempt to subject Pryor to a de facto religious test.

I have plainly said there are no anti-Catholics in the U.S. Senate. But I have also said that this does not empty the issue.

Bill Pryor's deeply held opposition to abortion as a moral issue, as well as his deeply held opposition to the jurisprudential reasoning as evidenced in Roe v. Wade, have made him a lightning rod for abortion-rights advocates. In other words, it is precisely Pryor's religious convictions that are bring scrutinized. Given the cast of mind of some of his critics, it makes it virtually impossible for practicing Catholics to ascend to the federal bench.

Some of Pryor's critics are themselves Catholic and thus resist the contention that he is being opposed because of his religion. But they do so by falsely claiming that on the subject of abortion, there is more than one acceptable position for Catholics to take. They are dead wrong. Catholic teaching on abortion is unequivocal: it is gravely sinful. This is not a matter of dispute—it is a matter of doctrine that all Catholics are expected to uphold. Especially public officials.

The danger, then, is that Bill Pryor may be rejected because of his religious convictions. This would be outrageous and that is why I am asking you to do what you can to prevent this from happening.

Sincerely,

WILLIAM A. DONOHUE, Ph.D.,
President.

Mr. MCCONNELL. Mr. President, I ask the chairman of the committee, isn't the important thing whether there is demonstrable evidence that a nominee has been unwilling to follow established law and it is my understanding—I ask the chairman whether it is his understanding—that Attorney General Pryor has followed the law when it was very tough to do so as an elected official in Alabama.

I believe our friend from Alabama, the junior Senator from Alabama, Mr. SESSIONS, cited a number of cases upon which Attorney General Pryor, as an elected official and not insulated from the wishes of the voters, took very tough positions on various issues because he was following the law. Isn't that the fundamental question that we ought to ask of nominees, whether to the left or to the right? Will you follow the law? And if they have demonstrated examples where they have done so, that would be relevant to whether or not they ought to be confirmed.

Mr. HATCH. It certainly would. We have reached a point on the Judiciary Committee where a person who has always had an honorable reputation such as General Pryor is immediately told by my Democratic colleagues that he cannot follow the law because of his deeply held beliefs. Come on. He has more than shown that he follows the law even though sometimes it is totally in conflict with his religious beliefs because he is a great lawyer. He realizes that if you do not follow the law, pretty soon we will not have any laws. The quickest way to get rid of the Constitution is to not abide by it. Even though there are decisions by the Supreme Court that I abhor, and that I think are bad decisions to start with, the fact is that when it is the law, I believe we ought to abide by it.

He has more than amply shown that he would, even under severe criticism by his supporters—by his own Governor who appointed him, by the Supreme Court Chief Justice who begged him to make certain arguments, he abides by the law. Yet his assertions and his word as a man of integrity and honor all his life are given short shrift.

Democrats are playing this phony ''gotcha politics'' game, in which they ''investigate'' unauthenticated—and many believe, stolen documents—and we object but participate only to keep our side informed. After weeks of their ''investigation,'' they didn't find one thing inconsistent with Pryor's testimony. They called almost everyone named in these documents. I don't know if they got all of them on the phone. But they didn't find one thing wrong. Pryor made himself available twice, so they could ask any question they wanted to ask, but twice, they didn't ask a single question. Then they come here and said they haven't had the full investigation. Give me a break.

It is getting to be where it is hard for people of devout beliefs to not be criticized if those beliefs contradict abortion rights.

Look. We have people on our side who feel very deeply about that. Some of them—very few—wanted to filibuster. We stopped it because we knew it would be terrible for this body to go through filibustering nominees to the Federal judiciary.

But now Democrats are filibustering nominees. When a person of the integrity of Bill Pryor is constantly called into question because of deeply held beliefs, I can see why people from all over the country are starting to ask what his deeply held beliefs are. They are religious beliefs because he is a traditional pro-life Catholic—and God forbid conservative—and that is, frankly, behind this in the eyes of many people.

I don't want to attribute that to my colleagues on the committee but I believe they are letting this happen. I call on them to help stop it.

The reason I bring up these two posters tonight is because these liberal groups use these slogans that ''Catholics need not apply'' to argue against Republicans for supporting Charitable Choice legislation. When that slogan was used against Republicans, I did not hear any outcry from my friends on the other side. I did not hear any outcry. Specifically, Americans United for Separation of Church and State argued against John Ashcroft's nomination for Attorney General. Their press release stated that Ashcroft's Charitable Choice provisions allow a government-funded program to hang a sign that says ''Catholics Need Not Apply.''

That is ridiculous. But that is what they did. I did not hear any screaming about that. I did not hear any of this righteous indignation from our colleagues over here about that. We didn't dignify it; at least I didn't.

People for the American Way, which I think has a very checkered reputation in this town—I am getting so I don't believe anything they do—criticized the Bush administration for supporting Charitable Choice legislation. They said:

Charitable Choice opens the door to government approved discrimination. . . . An evangelical church running a government-funded welfare program could state that ''Catholics need not apply.''

I am sure some will say maybe they will do that. Maybe they will. I don't know. But they are saying a lot of the best welfare programs in this country, a lot of the best programs in this country—from the taking care of people standpoint—are done by religious organizations, including the Catholic Church.

Where was the outrage back in 2001 when the liberals were using the slogan ''Catholics Need Not Apply'' against the Bush administration and John Ashcroft?

My friends on the other side of the aisle were silent. I did not hear one of them complain about that.

I met with some 50 people yesterday from all over the country who believe we are devolving into an antireligious body because of what is going on here.

Again, it is all coming down to abortion.

All we have asked is for Senators not to filibuster judges. We think it is a dangerous, unconstitutional thing to do. Judicial nominees of any President deserve an up-and-down vote, especially once they are brought to the floor. There are all kinds of ways of stopping them before they get to the floor, and colleagues on both sides of the aisle understand those ways.

But I can tell you this, we can match the decency of our approach any day of the week to what went on during the Reagan and Bush 1 administrations, and now what is going on in this administration—any day of the week—statistically, number-wise, fairness, from a dignity standpoint.

All we want are up-and-down votes for these nominees, especially once they are brought to the floor. What is really bothering our friends on the other side is, we do have a right to bring people to the floor because we have this one-person majority. Can you imagine how much good work we could do if we had a few more in the majority? It would not be nearly this screaming and shouting and this bitterness that sometimes does arise, coming primarily from outside.

I think the public has a right to know exactly where their Senators stand on these issues. If you do not like Bill Pryor, vote against him. If you think that his religious views are going to color his decisions on the bench, vote against him. If I thought that, I would vote against him.

The public needs to know, how are you going to vote on these issues? Some of our colleagues are afraid to take on these outside groups. We did. I did. I have been condemned by some of them, even to this day, for having done

so. And I put through a lot of Clinton judges. The all-time champion was Ronald Reagan: 382 judges in his 8 years. He had 6 years of a Republican Senate to help him, only 2 years with Democrat opposition, and he got 382. It was remarkable. Guess how many Clinton got, with only 2 years of his own party in control of the Senate? In 6 years, where I was chairman, 377—5 less than Reagan. Had it not been for some of the holds on the other side—one Senator was not getting his, so he stopped another from getting his—I think Bill Clinton would have been the all-time confirmation champion, with 6 years of a Republican Senate. We treated him fairly. Now, you can always find something to complain about on both sides, but he was treated fairly under the circumstances. And I know it, and I know he knows it.

These people deserve an up-and-down vote, at least once they come to the floor. Justice delayed is justice denied. There are many of these cases, among the litany of people the Democrats have indicated they are going to filibuster—it is not just two. Pryor looks like he is going to be filibustered. Kuhl looks like she is going to be filibustered. Holmes looks like he is going to be filibustered. We have talked about Pickering being filibustered. You can go down through some others as well—Boyle from North Carolina, et cetera.

Our courts cannot work if we don't have judges to run them. What is really bothering some of our colleagues on the other side is that in relation to the American Bar Association, their gold standard during all my 6 years as chairman of the Judiciary Committee during the Clinton years has suddenly not been a gold standard but a tin standard to them, because people like Miguel Estrada, with the unanimously well-qualified highest rating of the American Bar Association, are stopped. For what reason? They do not even have a good reason.

The first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia, and not even a valid reason—at least I have not heard one yet, and I have heard everything they have said.

Priscilla Owen, you can't find a better woman. Priscilla Owen became a top-flight partner in one of the major law firms, broke through the glass ceiling for women, has been a mentor for women, is unanimously well qualified, and a justice on the Texas Supreme Court. She has all kinds of Democrat support from Democrat co-justices right on through the State—the people who know her the best. And she is being filibustered.

Bill Pryor is as good a man as I have seen come before the committee; yes, a person with very deeply held views. He might be filibustered.

Judicial nominees' qualifications should matter most. And a person's judicial qualifications ought to be the sole criteria by which we judge them. You cannot find better people than the ones I have been mentioning. I don't understand it. I don't understand why the other side is doing this. But they are doing it. And I think they are hurting this process tremendously.

All I want—and all any reasonable person should want—and all the public wants—is to have an up-and-down vote. Let these people be voted upon. If they are defeated, I can live with that. But if they are not defeated, they should be able to serve without having their reputation smeared, which is what these outside groups are doing. I don't think outside groups of the left or the right should be doing that. And they are distorting this process like I have never seen it distorted before.

Now, Senator FEINSTEIN was not here when I showed that the left used this slogan ''Catholics Need not apply.'' I don't think it is a good idea, whether these ''Catholics need not apply'' signs or ads come from the left or from the right. And I would prefer them to be stopped.

I don't like my colleague from Vermont thinking that I think he has even an ounce of religious bigotry. I do not. He needs to know that. But he can't just slide off and not recognize that this is where we are being taken by some of the attitudes and some of the approaches that are going on in the Senate Judiciary Committee—at least that is what the people outside think, religious people.

I have to tell you something, some of the greatest judges in this country are Catholics—and from every other religion. And some of the greatest ones have deeply held beliefs. But they are honorable, decent, honest people, just like Bill Pryor.

Now, look, what really has offended me and got me going here today—and I knew we were not going to go any further on energy tonight because the Democrats brought this up. We have an hour scheduled for the debate early in the morning tomorrow for a cloture vote. They don't want this cloture vote. Why not? It takes 15 minutes. And they are trying to say that we are tossing energy over the hill. They brought it up. And I am not going to let them get away with it anymore.

I care a lot for my colleagues on the other side. There is not one I do not like. That is not the usual BS around here. I do like my colleagues, and they know it. I don't feel good pointing out to them that what they are doing is dangerous for this process, and that people all over this land are starting to get some wrong ideas—maybe right ideas. I think these church leaders are not too far off. In fact, they may very well be right. They took the time to let us know how they feel.

But to come out here tonight and start this mess, and make these points, and then say that we are not willing to get the Energy bill done—come on. We have been doing a slow-walk around here for weeks now on the Energy bill. My colleagues on the other side know that Senator DOMENICI has had some health problems and that it has been very difficult for him, but he is a gutsy, strong Senator, one of the greatest ones who has ever sat here. And he is never going to let you know that he has been hurting. But they know.

We can do this bill by the end of this week, and we can still have our votes on cloture, which need to be done because the Senate is capable of doing multiple things. If we were not, we would not have lasted for over 200 years. And we can do those trade bills, too, if we just have a modicum of cooperation from the other side. But, no, there is a slow-walk here. And some on our side—in fact, it is a growing number—are starting to believe that slow-walk is to try to make the Senate look bad. You can't make it look bad because we have had a lot of legislation go through this year. And we are going to keep plugging away until we get more that this country needs. But it sure is a chore every step of the way.

I don't want to hear these phony arguments that we can't have 15 minutes for a cloture vote, or even an hour debate beforehand. We can start at any time in the morning.

Most people do not even get moving around here until 10 o'clock. We can do that without interfering with the energy debate. Senator DOMENICI was willing to be here all night long, if he had to, to take amendments and move this along. I think we Republicans were ready to be here for as long as it took to support him and others on the Democrat side who believe we need an Energy bill.

But to come out here and make these points against Bill Pryor that are not only false but demeaning to this body is wrong.

I am going to yield the floor. I know my colleague would like to speak. I am tired of hearing these arguments how holy some on the other side are. But I tell you this, there are people all over this land who are starting to think this system is not fair to people of belief, to people who have deeply held beliefs. I want you to know I am one of them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank so much the distinguished chairman of the Judiciary Committee. He has been a consistent defender of an independent judiciary. He takes those issues exceedingly seriously. He has defended them when there was a Democratic President and he was Chairman of the majority-Republican Judiciary Committee. He defended the President's legitimate prerogatives in nominations. He has been consistent on that and everybody knows it. There is no basis to criticize him.

Bill Pryor is a friend of mine. He is one of the finest, most decent people I have ever known. There is not a Member of this body or a member of any of these outside groups that has any more integrity, any more decency, any more

character than Bill Pryor. He is a sterling individual, an honest man. He tells the truth.

When asked, ''if you disagree with a law or a court opinion that goes against your values, will you enforce it?'', he said: ''Senator, you can take it to the bank.'' Not only did he say that, as so many of our nominees have and as we have accepted, he has demonstrated it time and time again as Attorney General of Alabama.

It is really extraordinary to me. I don't think there is a politician in America who has so consistently taken very difficult positions in a political environment—positions most people would say a politician was crazy to take—than Bill Pryor. He did it, and there is only one principle guiding him. What is that principle? It was required by the law. He is a man of the law.

Yes, he is a Christian gentleman. When he makes a statement, part of his religion teaches that it ought to be an honest statement. So when he said, ''if the courts rule on something I don't agree with, if it my contradicts my views on abortion, I will follow the law,'' you can take it to the bank. That is the kind of man Bill Pryor is.

There has been an awful lot of railing about this ad by the Committee for Justice. It has a courthouse chambers with a little sign on it, and the sign says ''Catholics need not apply.'' Isn't this a legitimate commentary on how people feel about what is happening here? You can agree or disagree, and say it is not a really an accurate statement if you want to. I say it is legitimate commentary.

My colleagues went into a conniption fit about it. The ranking member twice, in two separate hearings, called this ad despicable. Let me read for you what it says.

As Alabama Attorney General, Bill Pryor regularly upheld the law even when it was at odds with his personal beliefs. Raised a Catholic, those personal beliefs are shared by Mainers all across the Pine Tree State. But some in the U.S. Senate are attacking Bill Pryor for having ''deeply held'' Catholic beliefs to prevent him from becoming a Federal judge. Don't they know the Constitution prohibits religious tests for public office? Bill Pryor is a loving father, a devout Catholic, and an elected Attorney General who understands the law. The job of a judge is to uphold the law, not legislate from the bench. It's time for his political opponents to put his religion aside and give him an up-or-down vote. It is the right thing to do. Thanks Senators Snowe and Collins for making sure that the Senate stops playing politics with religion.

I think that is a legitimate ad. It represents the view of a lot of Americans. There is nothing despicable about that. But I will tell you what is despicable. It is despicable to lie and distort and misrepresent this fine man's reputation, to impugn his integrity, to suggest he did one thing wrong when he and a group of attorneys general raised money for the Republican Attorneys General Association. They are candidates for office. They raise money all the time. There is nothing wrong with that. But the Democrats insisted there be an investigation, even though they had the records for many weeks.

Parenthetically, let me just talk about how they got those records. The records came to Senator KENNEDY, not to the chairman of the committee, myself, or the senior Senator from Alabama. Senator KENNEDY had them for some time before anyone else knew they existed. The lady who gave them to him had been an associate of a certain Lannie Young in Alabama, who recently pled guilty to a bribery scheme investigated by the United States Attorney's Office and Attorney General Bill Pryor. So she leaks those documents to Senator KENNEDY, and then, at his staff's suggestion, to Senator LEAHY. And then the Democrats want to have an investigation. So the chairman's staff says, OK, let's get the attorney general on the phone. You can interview him, ask him any questions you want to ask him about this effort to raise funds for the committee.

The bipartisan investigative staff had the phone call. The chairman's staff asked many detailed questions, and Attorney General Pryor's answers corroborated his testimony before the committee during his hearing and in written questions. The Democrats refused to ask Attorney General Pryor any questions. Why? Because they wanted to stall his vote in committee. It was already the fourth time his hearing had been set. The time had come up for a vote to be cast on his nomination in committee. The Democrats didn't want a vote. So they dragged it out, partly by invoking a rarely used two-hour rule, cut off debate, and obstructed a vote.

The chairman then said we were going to continue the investigation again that night. He gave the Democrats another chance to call Attorney General Pryor on the phone. They again turned down this opportunity. So the investigation dragged on for over another week. They were given yet another chance to get Attorney General Pryor on the phone and ask him any questions they had about this alleged issue. Instead, they called 20 of the alleged contributors on the list. They called employees of the Republican Attorneys General Association. Not one contradiction was found. Nothing unethical was found. Yet the Democrats continue to sully his reputation by implying that the investigation proved that Pryor misled the Committee. This is wrong, because not one person in this body has the integrity of Bill Pryor, I would say. This is a fine, decent man who has lived his life doing the right thing. I feel strongly about that. I won't back down.

I will tell you some other things that are despicable in the attack on Bill Pryor. One of our Senators just said recently on this floor, with regard to Bill Pryor's participation in a certain Supreme Court case: He used his power as attorney general to obstruct the enforcement of the Violence Against Women Act in Alabama.

Now that is the kind of thing People for the American Way do. That is the kind of attack the Alliance for Justice puts out. I am sure some staff person put that language together for the Senator, and perhaps she made her speech and didn't really understand what she was saying.

That is a false and unfair statement. Let me tell you what he argued with respect to the Violence Against Women Act. He participated as amicus in an appeal to the Supreme Court questioning whether the part of that act creating a federal civil remedy for a purely intrastate act violated the Commerce Clause. Pryor argued his position to the Supreme Court, and the Supreme Court agreed with him.

This falsehood about Bill Pryor's indifference to violence against women is also ironic, because he has a tremendous reputation in the State of Alabama for standing up for the victims of domestic violence. Kathryn Coumanis is one of the leaders in the State in the movement to protect women against domestic violence. She heads the Penelope House. She has written on Bill Pryor's behalf and noted that the women's groups in the State involved in the issue of violence against women put Bill Pryor in their Hall of Fame. Yet we have people on this floor and we have outside groups saying Bill Pryor does not care about violence against women. That is flat-out wrong.

We have seen some outside groups attack Bill Pryor, saying that he was against the disabled. These groups should have been ashamed of themselves. Who are they? The ACLU, the People for the American Way, the National Abortion Rights Action League, Alliance For Justice. They work together and they have a tremendous amount of money. They created this supposed issue, sent out information to newspaper editors and made these allegations that Bill Pryor had gutted the Americans With Disabilities Act, and he didn't care about people with disabilities. They said so directly.

But what did he really do? He argued in the Garrett case against the constitutionality of one small part of the Americans With Disabilities Act that said a State employee could sue the State of Alabama, or any other State, for money damages in federal court for violations of the Act. It was a suit against the University of Alabama, a State institution; and the Attorney General of Alabama, charged with the responsibility of defending the State, said this in his brief: I believe in the Disabilities Act. I believe people with disabilities should be treated fairly. The State of Alabama believes that under the Federal statute this person can get his or her job back. The Federal court can issue an injunction against the State of Alabama to remedy a violation. But the Congress could not allow this State employee to sue the State for money damages because, under the Eleventh Amendment principle of sovereign immunity, a state

cannot be sued for money damages in federal court. This is because the power to sue is the power to destroy. A State always controls and limits the power of a suit against itself.

Bill Pryor took this argument to the Supreme Court. What did the Supreme Court do? The Supreme Court ruled Attorney General Pryor was correct. And in any event, this affected only 4 percent of all the cases that might be brought, because only 4 percent of the employees in America work for States. Most States have disability rights protections, anyway. They don't need to file under the Federal Act.

This is why it is wrong and despicable and dishonest to say Bill Pryor lacks sensitivity for the disabled simply because he legitimately defended the State of Alabama and won in the Supreme Court. This attack should not have been made.

Some say Bill Pryor is an activist. I would say he is an active attorney general. He is constantly working to preserve the rule of law and protect the legitimate interests of the people of Alabama. That is what he is paid to do. He is absolutely not an activist in the way Chairman ORRIN HATCH defines it. As Chairman HATCH defines it, an activist is a nominee for the bench who will not restrain himself or herself to the law, but in fact seeks to carry out and further their personal ideological agenda by twisting the meaning of words in statutes and the Constitution, and to otherwise act in a way that allows their personal views to dominate their legal requirements. An activist who seeks to be on the bench is someone who ought to be scrutinized carefully.

Bill Pryor is no activist. In fact, he is absolutely committed to the rule of law. His whole life and whole political philosophy has been built on the fact that judges should be true to the law whether they agree with it or not. That is the whole purpose of the rule of law. That is why this Nation is so wonderful, why we have so much freedom. We follow the law to an extraordinary degree. A lot of countries that have great potential never reach it because they don't have a rule of law that ensures predictability and justice.

As attorney general, Bill Pryor had to be an advocate. He proved to be a great one. As attorney general, he consistently has followed the law courageously, even when he knew he might face complaints from friends and allies. Members of the Senate should study his testimony carefully and evaluate his real record, not the trumped-up charges, not the bogus attack sheets being produced by outisde groups, and not mischaracterizations by these groups, some of which themselves have very out-of-the-mainstream positions.

Let me say, parenthetically, that a number of these groups have extreme views on the separation of church and State. Some of these groups believe there can be no drug laws, that we ought to legalize drugs. Some believe there can be no laws against pornography. The ACLU opposes laws against child pornography. Who is out of the mainstream here?

And let me ask you this: Why would leading African-American Democrats like our Congressman ARTUR DAVIS, a Harvard graduate and a lawyer himself, former U.S. Attorney; why would Representative Joe Reed, chairman of the Alabama Democratic Conference, a member of the Democratic National Committee, one of the most powerful political figures in Alabama for 30 years; why would Representative Alvin Holmes, Representative Holmes, a lieutenant with Dr. Martin Luther King, who has been beaten for his commitment to civil rights, all speak up for him? Why does the former Democratic Governor of Alabama speak so highly of him? Why does the Speaker of the Alabama House speak so admiringly of him?

All these people support him because he is not as Beltway attack groups have caricatured him. He has been a champion of liberty and of civil rights. Much has been changed in Alabama over the years. We have the highest number of elected African-American officeholders in the United States. On the day we had General Pryor's nomination hearing, it marked the anniversary of a sad day in which Governor Wallace stood in a schoolhouse door. But you must know that Bill Pryor was not part of that. He was a mere child at that time. Secondly, his parents were John F. Kennedy Catholic Democrats. I suspect this hearing might change some of their views. When he gave his inaugural speech after winning election as attorney general, with 59 percent of the votes, he opened that speech with these very telling words:

> Equal under the law today; equal under the law tomorrow; equal under the law forever.

Not segregation today, tomorrow, and forever, but equality. That is how he led off his speech, and that is the kind of man Bill Pryor is. Those words were a fitting response 40 years after a promise of another kind.

Bill Pryor is one of the good guys. He does the right thing. He frequently has refused pleas from his Republican friends when he thought the law didn't support their position. For example, those friends rightly believed the legislative district lines had been gerrymandered in the State, making it very difficult for Republicans to win legislative seats.

In fact, although we had in Alabama two Republican Senators, five Republican Congressmen, and a Republican Governor, only a third of the state legislature was Republican. Some Republicans felt that this was a redistricting problem. So they filed a voting rights suit arguing that the majority-minority legislative districts were improper. They asked for support from the Republican Attorney General. He would not take their side. He courageously led the case, as it turned out, for the African-American Democratic position.

He lost before the three-judge district court—and backed up by an amicus brief from the NAACP—won in the U.S. Supreme Court. His argument was plain and simple. He said the plaintiffs did not have standing to file a lawsuit. Whether the lawsuit had been meritorious or not, it was not a legitimate lawsuit because they did not have standing. Attorney General Pryor took it to the Supreme Court, and the Supreme Court ruled with him. Some of my friends and some of Bill's friends are still mad about that situation, but he believed that was the right thing to do under the law, and he made that call as the attorney general for the State of Alabama.

He had taken an oath to defend the State of Alabama. These gerrymandered districts were the laws of the State of Alabama, endorsed by the legislature. So he defended the districts even when it went against the interest of his political allies.

That is why Joe Reed and Alvin Holmes speak highly of Bill Pryor. They have seen him in action.

On one of the church-and-state issues that came up not long after he was appointed Attorney General by our former Governor, the Governor had a firm view about separation of church and State. Basically, he did not think there was much separation. He read the Constitution pretty plainly. The First Amendment says Congress shall make no law respecting the establishment of a religion, and the Governor thought that meant the United States Congress, not the State of Alabama. He did not adhere to the view that the 14th amendment incorporates the First and applies it to the States.

Then-Governor James said: What is wrong with coaches leading the players in prayer? He wanted Bill Pryor to file a lawsuit to vindicate him. Shortly after having been appointed Attorney General—at a very intense and emotional time in the State, with the Governor of the State speaking up for prayer in schools—Bill Pryor had to make a tough decision. He had to review the law carefully.

What did he do? He filed a respectable brief in court. He would not file the brief the Governor wanted, so the Governor got his own lawyer and he also filed a brief. As I know as a former Attorney General of Alabama, only the Attorney General is legally allowed to speak for the State in court. So Bill Pryor, as Attorney General, filed a brief saying that the Governor—who had just appointed him—did not speak for the State of Alabama.

Opponents said that Bill Pryor somehow is a tool of the chief justice of the Alabama Supreme Court, Roy Moore, who has deep convictions about how the Constitution and the laws ought to be applied with regard to separation of church and State, and who put in a monument in the court recently that had the Ten Commandments on it. The judge did not think anything was wrong with that. He met with the Attorney General, and they discussed legal actions against him to remove

the monument. They did not reach an accord. The attorney general did not agree with the Chief Justice on his views of what the law was. So eventually, the Chief Justice had to hire his own lawyer and file his own brief, and Attorney General Pryor filed a more limited brief pointing out that if you go to the Supreme Court of the United States, there are several different depictions of the Ten Commandments on the walls of the U.S. Supreme Court. He basically said: What is good for the U.S. Supreme Court ought to be good for the Alabama Supreme Court.

Opponents say Bill Pryor is extreme on religious issues. That is not true. For example, I mentioned earlier how he stood up and did what was right with regard to the pressure from the Governor on school prayer. After that decision, there was much confusion in the State. School boards did not know what to do; teachers were leading prayer; others said you cannot do that. What was the law?

To answer that question, Attorney General Pryor wrote guidelines for school systems in Alabama advising them on what they could legally do as teachers, principals, and coaches, and what they could not do, and what children could do and what they could not do.

The Atlanta Journal Constitution wrote an editorial praising him for stepping up in a tough, emotional time and providing good leadership. And, indeed, the Clinton Administration basically adopted verbatim Bill Pryor's guidelines, and sent them around the country to other schools.

This idea that he is some sort of extremist is absolutely false. This is a courageous lawyer who does the right thing day after day, time after time to a degree I have never seen before by any politician in my life.

On abortion, they say he has deeply held beliefs about abortion; he cannot be trusted to be a judge. The distinguished Senator from Kentucky a few moments ago hit it exactly correctly. When a nominee has taken a view that they believe abortion is wrong, then it is perfectly proper for the Senate to inquire about that. What should the inquiry be? Senators should not say: Mr. Pryor, we want you to grovel down here on the floor; we want you to renounce your views about abortion; we want you to say, ''I don't believe that anymore,'' as a price for being confirmed—that is absolutely wrong.

What should Senators say? They should say: Mr. Pryor, you have expressed your view that abortion is bad, that you do not think Roe v. Wade was rightly decided; but will you follow it? Then see what he says. Senators do not have to accept what he says; they can inquire further. To those inquiries, Bill Pryor said ''Of course, I will follow the law, Senator. You can take it to the bank.'' What is significant is that Bill Pryor has a record showing that he will live up to that answer.

As far as I can tell, there have been only two instances in his public life in which he has dealt with abortion. The first had to do with Alabama's partial-birth abortion statute, that severely restricted partial-birth abortion. Partial-birth abortion is a very horrible procedure. Overwhelmingly, Americans reject it. The American Medical Association said it is never justified as a medical procedure. And Alabama passed legislation to virtually eliminate it.

As Attorney General, he superintended the State's district attorneys who enforced this law. He sent them a directive in 1997 stating that parts of the partial-birth abortion bill were unconstitutional and could not be enforced. Isn't that proof that he will follow the law even if he disagrees with it?

The other example involving abortion was when Attorney General Pryor issued stern warning that those who threatened violence against abortion clinics, or against those who sought to exercise the constitutional right to abortion at those clinics, would be fully prosecuted.

So outside groups attack him on his deeply held beliefs, even deeply held religious beliefs, and they suggest that somehow he is an extremist because he personally thinks that abortion is a taking of innocent human life.

Bill is a thoughtful person. He is not some automaton for any church or any person. He thinks about these issues carefully. He has shared his views about it. He believes that the life that is in the womb has all the characteristics of what that life will be as an adult. There is no doubt that it is going to become a human being. He believes that we ought not to withdraw the law's protection from that life. That is his view.

But the Supreme Court has not bought it. In Roe v. Wade and Planned Parenthood v. Casey they held differently. Bill Pryor said: I understand that. I will follow the Supreme Court precedents.

How do we know he will? Because he did it even with respect to the partial-birth abortion statute in Alabama. So I do not know what more a person can do to prove his fidelity to the rule of law.

Bill has gained great support in the State. He is a man who is respected across party lines, across racial lines. Representative Alvin Holmes wrote this powerful letter on his behalf, and he told the story about Alabama's old constitutional provision that prohibited interracial marriages. Of course, that had been struck down some time ago by the United States Supreme Court. It was unconstitutional, but it remained in the constitution.

Alvin Holmes, as a lieutenant for Dr. Martin Luther King, and still a vibrant battler for civil rights in Alabama, said it ought to come out of the constitution. Attorney General Bill Pryor, as Alvin Holmes said, was the only white politician in the State, Democrat or Republican, who supported him. They got it out of the legislature, put it on the ballot, and the people of Alabama eliminated it from our constitution. Bill Pryor campaigned for that elimination throughout the State because he thought it was wrong that our constitution would have those words still in it.

This is a man of quite extraordinary character, a man of great skill and ability, who has taken cases to the Supreme Court and won them to an extraordinary degree.

So I submit there is nothing wrong with the ad that that group put out to defend Bill Pryor. It is basically an honest evaluation of the situation. Somebody might disagree with it, but it is honest.

In contrast, many of the attacks on Bill Pryor have not been honest. Outside groups have been unfair and have deliberately twisted his record. What they have done is not right.

Some in this chamber say we need collegiality. They say Republicans should renounce this outside ad about ''Catholics need not apply.'' I would say this to my friends: Let's see you renounce some of these ridiculous, obscene, despicable misrepresentations of Bill Pryor's record and his character. I would like to see that.

Yes, we do have a problem with collegiality, but I do not think it is the result of Chairman HATCH's leadership. When he was Chairman of the Committee, we moved 377 Clinton nominees. Only one was voted down. When he was Chairman of the Committee, not one time did we vote down a Clinton nominee on a party-line vote. During that short time, a year and a half or so, that the Democrats had a majority in the Senate Judiciary Committee, they voted down in committee, on a party-line vote, two President Bush nominees.

In May, President Bush nominated 11 judges for the court of appeals. He renominated one Democrat who had been nominated by President Clinton, but not confirmed, and two Democrats overall. The Democratic Judiciary Committee promptly moved the 2 Democrats and confirmed them. Almost 2 years later, several of the remaining nine had not even had a hearing in committee. This was an unprecedented slowdown of the confirmation process.

The Democrats met and decided deliberately and consciously to change the ground rules for confirmation. There is no doubt about that. Who is changing the ground rules? I submit it is the Democratic members of the Judiciary Committee, by some of their tactics. They started an effective filibuster in the committee, creating a situation in which 9 out of the 19 members of the committee could withhold a vote by relying on a misinterpretation of Rule IV. I have never heard of that.

The chairman properly ruled under Rule IV that the chairman has the prerogative to bring a matter up for a vote.

Their citation of rule IV ignores what it says the purpose of that rule.

The first sentence says to bring a matter up for a vote and to deal with a recalcitrant chairman who will not allow a matter to be voted on, if you get one member of the other party and a majority vote, then you can bring a matter up for a vote even if the chairman does not agree. But the rule does not give a group a right to filibuster and keep a vote from occurring, which is what they wanted to do.

We have had two open, notorious and unprecedented filibusters on the floor against superb circuit court nominees, Miguel Estrada and Priscilla Owen. Both received the highest rating by ABA, and both have extraordinary records. In the history of this country, we have never had filibusters of circuit and district judges, but the Democrats have started two now because they decided to change the ground rules.

Now we have these Members come down on the Senate floor and act all upset that somehow collegiality is being upset here. They do not know why the chairman has determined to move nominations forward and not let them be obstructed and delayed. I call on the Democratic leader, Senator DASCHLE who speaks for this party. There would not be a filibuster of these nominations if he did not approve it. He needs to remember the history of this body. It is a mistake for him to lead the Democrats into an unprecedented period in which we filibuster Presidential nominees for the federal courts.

I firmly believe a fair reading of the Constitution is that nominations for judgeships should be confirmed based on a majority vote. Any fair reading of the Constitution will show that. That is why we have never filibustered in the history of the country, but the Democrats have now created what in effect is a supermajority requirement to block the right of nominees to an up-or-down vote.

There are many more things I could say about Bill Pryor. But I will not do that tonight. I appreciate the indulgences of my colleagues and the staff. This battle to allow people to have honest personal views, so long as those views do not influence their official interpretations of existing law, is an important battle for America. I intend to be a part of it and a lot of others do, too. It is not going away. We are not backing down.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, to those of us who have been given this great honor to serve in the Senate, there is a moment when we are asked to take the oath of office. In taking that oath of office, we swear to uphold one document. That document, of course, is the Constitution of the United States of America.

We are not asked our religion, nor our beliefs in our religion. We are only asked if we will take an oath to God that we will uphold this Constitution. All of us take it very seriously and all of us take the wording of this Constitution very seriously because within this small document are words that have endured for more than two centuries. There was wisdom in that Constitutional Convention which America has relied on ever since.

Sometimes people say, times have changed. And we do amend the Constitution from time to time. By and large the principles that guided those men who wrote this Constitution have guided this Nation to greatness. I am honored to be a small part of this Nation's history and to serve in the Senate.

I looked to this Constitution for guidance for this debate tonight, and I find that guidance in Article 6 of the Constitution. Let me read a few words from that book.

. . . no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Most of the men who wrote this Constitution were religious people. They had seen the abuse of religion. They had seen leaders in other countries using religion for political purposes and against other people. They came to this land and said, it will be different in America. We are going to protect your right to believe. We are not going to establish a government church and we will say in our Constitution that no religious test will ever be required of a person seeking a nomination for public office in our land.

Those are very absolute and clear words. I am a Catholic, born and raised. My mother and father were Catholics. My children have been raised in the Catholic faith. In my lifetime, I have seen some amazing things happen. In 1960, I was about 15 or 16 years old. There was a Presidential race with a candidate by the name of John Fitzgerald Kennedy of Massachusetts. That may be the first Presidential election I followed closely. I remember watching the Los Angeles convention on my black-and-white television at home in East St. Louis. I took a special interest because I had a stake. The John Fitzgerald Kennedy candidacy was the first opportunity since Alfred Smith for the election of a Catholic to be President of the United States. We do not think twice about that now, but in 1960 it was a big deal. And a big problem for John Kennedy. So much so that he feared he might lose the election over that issue.

He did something that was historic and I guess unprecedented. He went to Texas and addressed a Baptist convention to explain his view of the relation of church and State because there were real concerns. Many people felt that those who were believers of the Catholic church were so connected and so committed to the teachings of the church and to the leader of the church, the Pope in Rome, that they could not make objective decisions on behalf of the United States; they would be clouded in their judgment because of the demands of their faith.

John Kennedy, a Catholic, went to Texas to a Baptist convention to tell those gathered that his first allegiance as President was to the United States and not to any religion. He said: I believe in America where the separation of church and State is absolute.

Many people think that statement and that visit turned the election for John Kennedy, an election which he won by just a very small margin. It dispelled the fears and concerns of many people across the country that a Catholic would be first loyal to Rome and then loyal to the United States.

It is an interesting thing to reflect on the view of Catholics in public life in 1960 and the debate which is taking place tonight. The issue has come full circle. Now there are those who argue that because a nominee comes before the Senate and professes to be a Catholic that we cannot ask that nominee questions about his political beliefs. There are many religious beliefs that are also political beliefs. There are some religious beliefs that are not. You can be an adherent to the Jewish religion, keep kosher, and I cannot imagine how that becomes a political issue. What is the purpose of asking a question about that? But whether you are Jewish, Catholic, Protestant, or Muslim, it is appropriate to ask any nominee for a judicial position, Where do you stand on the death penalty? That is a political issue. It is a social issue. And yes, it is also a religious issue.

Some have argued tonight if a person comes before the Senate with strong religious convictions that somehow we are disqualified from asking questions about political issues. I see it much differently. I think the Constitution makes it very clear we should never ask a person their religious affiliation. Article 6 of the Constitution says that is not a qualification for public office.

So what business do we have asking that question? But to say that because a person's political beliefs also happen to be their religious beliefs, that for some reason we cannot ask questions about them, goes entirely too far.

Consider a so-called church in my State, the World Church of the Creator in Pekin, IL. A deranged individual named Matt Hale—who could not be approved by the committee on character and fitness after he had passed law school and therefore was never licensed to practice law—decided to create a church and an Internet Web site in the name of that church, the World Church of the Creator, and started peddling the most venomous beliefs imaginable—bigoted, hateful, racist, anti-Semitic beliefs in the name of religion. This church and its so-called teachings drew some demented followers. It culminated one day when one of those followers went on a shooting spree, killing a basketball coach of Northwestern University, Ricky Birdsong, and then driving over to the University of Indiana and gunning down an Asian student, and was finally apprehended.

When Matt Hale was asked about the activities of this individual, he said, that is just our religion. Their religion.

If someone who comes before us with unusual beliefs and political issues says, stop, you cannot ask me about those beliefs because they are my deeply held personal religious convictions, are we then disqualified? If we are, imagine where that can lead.

In this case we have an individual, William Pryor, Attorney General of Alabama, who is a Catholic. The reason I know that is the chairman of the Senate Judiciary Committee, ORRIN HATCH, asked him. That is the first time I can recall in the 4½ years I have served on this committee that it has ever been asked of any nominee. Tonight Senator HATCH said he would never do it again. I am glad to hear him say that. I hope he never does that again and I hope no committee chairman of any committee ever asks any nominee for office their religion. The Constitution makes it clear we should not. But the exception was made by Senator HATCH and he asked Mr. Pryor his religion.

That triggered this ad campaign which we have discussed tonight and this heated debate which many have followed in the Senate. We have had Members come to the Senate, one who is a Catholic, saying, This is what good Catholics believe.

I guess I was raised in a little different branch of the Catholic church, maybe a branch that believes there ought to be a little more humility in religious belief. I don't like to stand in judgment of my peers as to whether they are good people or not; let their lives speak for themselves. And I certainly would never stand in judgment of someone's adherence to a certain religious belief. That is personal, as far as I am concerned. But not personal to some of my colleagues.

They come to the floor and make pronouncements about who is a good religious person and who is not. I am not comfortable with that. In fact, I am a little bit uncomfortable discussing this issue of religion in the Senate, but I have no choice. It has been brought before us.

What I believe is this: Within the Catholic church there are many differences of opinion, even within the church members who serve in the Congress. I know of one or two who I think are really close to adhering to all of the church's beliefs in the way that they vote, but only one or two, because although those who come to the floor want to argue to you that the Catholic Church is only about one issue, abortion, there are many of us who believe it is about a lot of issues.

It is about the death penalty—the death penalty, where the church has been fairly clear in its position. Again, I am troubled that I would even read this and put it into the CONGRESSIONAL RECORD, but I have no choice, based on what has been said over the last 3 hours. This is a statement by Pope John Paul II, St. Louis, MO, January 22, 1999:

The new evangelization calls for followers of Christ who are unconditionally pro-life, who will proclaim, celebrate, and serve the Gospel of life in every situation. A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself without definitively denying criminals the chance to reform. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary.

The words of Pope John Paul II. You didn't hear much reference to the Catholic Church's position on the death penalty tonight by those who were saying that William Pryor is being discriminated against because of his Catholic beliefs. Perhaps it is because Mr. Pryor not only supports capital punishment, he fought State legislation in Alabama which sought to replace the electric chair with lethal injection.

I am not going to stand in judgment as to whether or not he is a good Catholic. That is not my place. But I bring this issue before my colleagues so they can understand that the Catholic Church is about more than one issue. There are those who hold beliefs which may or may not agree with all the teachings of that church, and that is within their conscience and their right to do. It is not mine to judge.

But for us to be told repeatedly by the other side of the aisle that to oppose William Pryor is to be against him because he is Catholic is just plain wrong, and I resent it. I resent it because, frankly, there are many reasons to oppose his nomination—because of his political beliefs.

Oh, yes, some relate to his religion and some don't. But what we are told in the Constitution is that distinction makes no difference; whether they are religious or not, stick to political beliefs. And I believe my colleagues have really tried to do that on the committee.

Let me also say I was disappointed that the Senator from Pennsylvania, Mr. SANTORUM, earlier quoted, I believe out of context, the statement made by Senator FEINSTEIN of California. It was unfair to her because she had left the floor and he characterized some of her remarks in ways that I don't believe she intended. To make certain that the record is clear, I asked her staff to provide me with a copy of the speech which she gave, and I would like to read an excerpt of that speech given on the floor this evening by Senator FEINSTEIN to clarify and make certain the Senate understands that the quote which was referred to earlier by the Senator from Pennsylvania was inaccurate.

I quote what Senator FEINSTEIN said:

Each time the Democrats oppose a nominee, we are accused of some sort of bias unrelated to the merits. With Miguel Estrada, we were accused of being anti-Hispanic. With Priscilla Owen, anti-woman. With Charles Pickering, anti-Baptist. And now, with William Pryor, anti-Catholic.

These charges have been described by some as ''scurrilous,'' and I agree. To describe Democrats as anti-Hispanic after the many Hispanic Clinton nominees that were stopped in their tracks by a Republican majority is disingenuous at best.

To call us anti-woman, well, [as Senator Feinstein said] I don't have to tell you how bizarre it is for me to be called anti-woman.

And to say we have set a religious litmus test is equally false.

Many of us have concerns about nominees sent to the Senate who feel so very strongly about certain political beliefs, and who make intemperate statements about those beliefs that we raise questions about whether those nominees can be truly impartial.

And it is true that abortion rights are often at the center of those questions. As a result, accusations have been leveled that anytime reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice.

But pro-choice Democrats have voted for many nominees who are anti-choice and who believe that abortion should be illegal—some of whom may have even been Catholic. I don't know, because I have never inquired.

So this is not about religion. This is about confirming judges who can be impartial and fair in the administration of justice. And when a nominee like William Pryor makes some fairly inflammatory statements and evidences such strongly held beliefs on such core issues, it is hard for many of us to accept that he can set aside those beliefs and act as an impartial judge.

Somehow, that was characterized as questioning General Pryor's religious beliefs. I do not think any fair reading would reach that conclusion. In fact, I think Senator FEINSTEIN was as careful as we all have been to draw that clear and bright line that the Constitution requires us to draw.

She said at one point there—and it may come as curious to people following the debate—that she is not certain about how many Catholics we voted for because, you see, that is not one of the required questions when a person applies for a judgeship in this country. We do know, though, just by taking a look at some of their resumes, that they belong to some organizations which suggest that they might be Catholic. So I would like to say for the record that the argument that we have somehow discriminated against Catholics who are opposed to abortion is not supported by the evidence.

We have, for example, confirmed a circuit judge who was active in the Knights of Columbus and the Serra Club and sits on the board of a Catholic school—Michael Melloy.

We confirmed a district court judge who is a member of the parish council of his Catholic church, the president's advisory board of a Jesuit High School Parents' Club, the St. Thomas More Society for Catholic lawyers, and his State's chapter of Lawyers for Life—Jay Zainey.

We confirmed a district court judge who was the former president of Catholic Charities of her city's diocese and a member of both the Catholic League

and of the St. Thomas More Society—Joy Flowers Conti.

This serves as clear evidence that Democrats do not have an abortion litmus test for judicial nominees. There have been many we have confirmed who were opposed to Roe v. Wade and have made it very clear that they are opposed to it.

Some names that I can refer to very quickly: John Roberts, DC Circuit; Jeffrey Howard, First Circuit; John Rogers, Sixth Circuit; Deborah Cook, Sixth Circuit; Lavenski Smith, Eighth Circuit; Timothy Tymkovich, Tenth Circuit; Michael McConnell, Tenth Circuit; and the list goes on.

So for colleagues to stand before us and say we discriminate against Catholics, the record doesn't show it. There are people who clearly have Catholic affiliations in their background who have been approved by this committee and are supported by Democrats. For them to argue that we have a litmus test and turn down judges just because they oppose abortion denies over 140 nominees coming out of the Bush White House, most of whom are pro-life and most of whom disagree with Roe v. Wade personally and still have won our approval. I read a partial list.

In my own situation, I am pro-choice. I have personal feelings against abortion but believe that in my public capacity women should have the right to choose. And yet in my own home State of Illinois, of the 12 judges I have had the privilege to appoint to the Federal bench, at least 3 I have come to learn afterward were pro-life. I learned it afterward because I didn't ask them in advance. It really wasn't a condition for their appointment as far as I was concerned. I just want them to be fair minded and balanced. Whether they disagree with me on that issue or one other issue is really secondary.

So what we have before us today is an effort by the proponents of William Pryor to ask us to look beyond his political beliefs and really turn this into a debate about religion. I hope we don't do that. I hope we don't do it for his sake and I hope we don't do it for the sake of the Senate.

The Senate Judiciary Committee meeting of last week was one of the saddest times I have spent as a Senator. I saw things happen in that committee that I hope will never be repeated. I saw members of the committee raise the issue of religion in a way which the Constitution has never countenanced and I hope and pray has never happened before in that committee. I hope it never happens again.

The nomination of William Pryor is fraught with controversy. This whole question about his involvement with the Republican Attorneys General Association—we haven't even completed that investigation. This man's nomination comes to the floor before questions have been asked and answered that are serious questions about possible ethical considerations.

I won't prejudge the man as to whether he will be cleared of any suspicion or not. But in fairness to him, in fairness to the process, in fairness to the Senate, should not we have completed that investigation before he was reported from committee?

When it comes to critical issues involving Mr. Pryor's background, a lot of different groups have raised questions about him. The argument is being made on the other side that the only reason you can possibly oppose William Pryor is if you are anti-Catholic.

How then do you explain the editorials in opposition to his nomination? Editorials from Tuscaloosa, AL; editorials from Huntsville, AL; the Washington Post; Charleston, SC; St. Petersburg, FL; Arizona; the Atlanta Journal-Constitution; Honolulu Adviser; Pittsburgh newspapers—the list goes on.

Are we to suggest that all these newspapers that oppose his nomination are anti-Catholic? Not if you read the editorials. They have gone to his record and they have come to the conclusion that he is not the appropriate person to serve in this circuit court capacity.

Let me tell you some of the issues they raise. Mr. Pryor's zeal to blur the lines between church and state, a line that was clearly drawn in our Constitution and clearly drawn by John Kennedy, Presidential candidate, is a problem. He is so ideological about the issue that he has confessed, ''I became a lawyer because I wanted to fight the ACLU.'' He then derided that organization as standing for ''the American 'Anti-Civil' Liberties Union.'' I asked him if he would recuse himself in cases involving the ACLU. He said no, but he pledged:

> As a judge, I could fairly evaluate any case brought before me in which the ACLU was involved.

Mr. Pryor and I are just going to have to disagree on that particular statement.

He has been a staunch supporter of Alabama Chief Justice Roy Moore and his midnight installation of a 6,000-pound granite Ten Commandments monument in the middle of the State courthouse. The Eleventh Circuit Court recently ruled that the display was patently unconstitutional and had to be removed.

At his confirmation hearing, Senator FEINSTEIN asked him to explain his statement that:

> . . . the challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective.

He ducked the question.

I think if you are going to serve this Nation and you are going to serve this Constitution, you have to have some sensitivity to the diversity of religious belief in this country. To argue that this is a Christian nation—it may have been in its origin but today it is a nation of great diversity. That diversity is protected by this Constitution. Obviously, Mr. Pryor has some problems in grasping that concept.

On the issue of judicial activism, not only does Mr. Pryor have problems with separation of church and state, he also has problems separating law and politics. He believes that it is the job of a Federal judge to carry out the political agenda of the President. How else could you interpret his comments about the Bush v. Gore case in the year 2000 when he said:

> I'm probably the only one who wanted it 5 to 4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have not more appointments like Justice Souter.

That is a statement by William Pryor.

On another occasion, he said:

> [O]ur real last hope for federalism is the election of Gov. George W. Bush as President of the United States, who has said his favorite Justices are Antonin Scalia and Clarence Thomas. Although the ACLU would argue that it is unconstitutional for me, as a public official, to do this in a government building, let alone at a football game, I will end my prayer for the next administration: Please God, no more Souter.

I ask Mr. Pryor, a member of the Federalist Society, whether he agrees with the following statement from the Federalist Society mission: ''Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.'' I have asked this question of almost every Federalist Society member that has been nominated by President Bush. Mr. Pryor is the only person who gave me a one word answer. He said, ''Yes.''

On the issue of federalism, Mr. Pryor has been a predictable, reliable voice for entities seeking to limit the rights of Americans in the name of States' rights. He has filed brief after brief with the Supreme Court arguing that Congress has virtually no power to protect State employees who are victims of discrimination.

Under his leadership, Alabama was the only State in the Nation to challenge the constitutionality of parts of the Violence Against Women Act, while 36 States filed briefs urging that this important law be upheld in its entirety—the exact opposite position of one Attorney General William Pryor.

He also filed a brief in the recently decided case of Nevada v. Hibbs. He argued that Congress has no power to ensure that State employees have the right to take unpaid leave from work under the Family and Medical Leave Act. A few months ago the Supreme Court rejected his argument and said:

> Mr. Pryor, you have gone too far this time.

The issue of women's rights has been well documented. I will not go into those again.

On the issue of voting rights, Mr. Pryor urged Congress to eliminate a key provision in the Voting Rights Act which protects the right to vote for African Americans and other racial minorities. While testifying before this committee in 1997, Mr. Pryor urged Congress to ''seriously consider . . . the repeal or amendment of section 5 of

the Voting Rights Act'' which he labeled ''an affront to federalism and an expensive burden that has far outlived its usefulness.''

Given the importance of section 5 of the Voting Rights Act to the ability of African Americans and other racial minorities to achieve equal opportunity in voting, this call for its repeal is deeply disturbing. Thankfully, the Supreme Court and Congress disagreed with Mr. Pryor about the importance of section 5 of the Voting Rights Act.

There was one case involving inmates' rights which I thought was particularly noteworthy. He has been a vocal opponent of the right of criminal defendants. In Hope v. Pelzer, Attorney General Pryor vigorously defended Alabama's practice of handcuffing prison inmates to outdoor hitching posts for hours without water or access to bathrooms. The Supreme Court rejected Mr. Pryor's arguments citing the ''obvious cruelty inherent in the practice,'' and calling the practice ''antithetical to human dignity'' and circumstances ''both degrading and dangerous.''

In a July 2000 speech, Attorney General Pryor was outspoken in his disdain for the Supreme Court's reaffirmation in Dickerson v. United States of the constitutional protection of self-incrimination first articulated in Miranda. He called the Dickerson decision, authored by Chief Justice Rehnquist an ''awful ruling that preserved the worst example of judicial activism.''

The list goes on.

In the case called United States v. Emerson, Attorney General Pryor filed an amicus brief to argue that a man who was the subject of a domestic violence restraining order should be allowed to possess a firearm.

Let me repeat that.

The man who was the subject of a domestic restraining order should be allowed to own a firearm.

Mr. Pryor called the Government's position a ''sweeping and arbitrary infringement on the second amendment right to keep and bear arms.'' He was the only State attorney general in the United States of America to file a brief in support of that position.

When it comes to tobacco, he has been one of the Nation's foremost opponents of a critical public health issue—compensation for the harms caused by tobacco companies. He has ridiculed litigation against companies stating:

This form of litigation is madness. It is a threat to human liberty, and it needs to stop.

Mississippi Attorney General Michael Moore said:

Bill Pryor was probably the biggest defender of tobacco companies of anyone I know. He did a better job of defending the tobacco companies than their own defense attorneys.

Arizona Attorney General Grant Woods, a Republican, said of William Pryor:

He's been attorney general for about five minutes, and already he's acted more poorly than any other attorney general.

On the issue of environmental protection, time and again he has looked the other way when it comes to protecting our environment.

For people to argue that the only position against William Pryor is based on his religion ignores the obvious. When it comes to his political beliefs, when it comes to his actions as attorney general of Alabama, time and time again he has taken extreme positions.

Should this man be entrusted to a lifetime appointment to the second highest court of the land? I think not. Many others agree with that conclusion.

I certainly hope that when this debate ends, however it ends, that we will call an end to the involvement of religion in this debate.

It has been a sad night for me to listen to what some of my colleagues have said in an effort to promote the political agenda of a certain part of America in an effort to promote the candidacy of an individual. I am afraid many of my colleagues have crossed a line they should never have crossed.

I hope and pray that before we utter the next sentence in relation to the Pryor nomination that each of us who has taken an oath to uphold this Constitution will stop and read article VI:

No religious test shall ever be required as a qualification to any office or public trust in the United States.

Those words have guided our Nation for over 200 years. They should guide each of us in good conscience.

I yield the floor.

Mr. REID. Mr. President, I served in the Congress since 1972. I have had the good fortune to listen to some brilliant statements made on various subjects over 21 years. But I have to say that the statement by the senior Senator from Illinois tonight is the finest statement I have ever heard in some 21 years. I hope the people of Illinois know what pride we have in DICK DURBIN.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

ENERGY POLICY ACT OF 2003—Continued

Mr. FRIST. Mr. President, obviously we have not had the progress we had hoped for on the Energy bill over the course of the last several days. I know that Senators have indicated they still have amendments to the electricity amendment. And it is clear to me there is not a definite sign as to when we might finish that issue.

Members have the ability to slow down this bill. With the lengthy amendment list that is before us, there are many options to do that. After numerous discussions today, it is clear to me we are not on a course to complete this bill over the next couple of days.

It is important to do. I set out several weeks ago—actually 2 months ago—stating that the objective would be to work aggressively over the course of this final week, having had the bill before us in May, spending a number of days before this week on this bill.

In spite of that commitment on my part to plow ahead, it appears to me now—Wednesday night at 10 o'clock—that the writing is on the wall: We are not going to be able to complete the bill.

Having said that, I think it is important that Members have an opportunity to really prove their commitment to this underlying bill. Again and again, I have heard: Yes, we want to pass a comprehensive national energy policy. Although I hear that, and I express this willingness—and I think that is probably right—it is important, before we leave for this August recess, to see what that commitment really represents. Thus, I will shortly file cloture, and the Senate will have the opportunity to go on record for completing a bill which will accomplish just that—establishing a national energy policy.

Mr. President, in that regard, I now ask unanimous consent to set aside the pending amendments in order for me to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

MOTION TO COMMIT

Mr. FRIST. Mr. President, I send to the desk a motion to commit the pending legislation with instructions.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] moves to commit S. 14 to the Committee on Energy and Natural Resources with instructions to report back forthwith with the following amendment numbered 1432.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

AMENDMENT NO. 1433

Mr. FRIST. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 1433 to instructions of the motion to commit S. 14.

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

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

The amendment is as follows:

At the end of the amendment add the following: ''All provisions of Division A and Division B shall take effect one day after enactment of this act.''

AMENDMENT NO. 1434 TO AMENDMENT NO. 1433

Mr. FRIST. Mr. President, I send a second-degree amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 1434 to amendment No. 1433.

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

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

The amendment is as follows:

On line 3 of the amendment strike ''one day'' and insert ''two days.''

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending motion.

Bill Frist, Pete Domenici, Orrin G. Hatch, Rick Santorum, Saxby Chambliss, Larry E. Craig, Jon Kyl, Craig Thomas, Charles Grassley, Sam Brownback, Lamar Alexander, Norm Coleman, Mike DeWine, John Cornyn, Mitch McConnell, Gordon H. Smith.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum be waived.

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

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR NO. 169

Mr. FRIST. Mr. President, I now ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session for the consideration of Calendar No. 169, the nomination of Carolyn Kuhl, to be U.S. Circuit Judge for the Ninth Circuit; further, that there be 4 hours of debate equally divided in the usual form, and that following that debate, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate; finally, I ask consent that following that vote, the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. The Senator from Nevada objects.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. I would ask if the request were modified to 10 or 12 hours, would it be agreed to?

Mr. REID. At this time, it would not.

EXECUTIVE SESSION

NOMINATION OF CAROLYN B. KUHL, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. FRIST. Mr. President, I now ask unanimous consent that the Senate proceed to executive session for the consideration of Calendar No. 169, the Kuhl nomination.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 169, the nomination of Carolyn Hill, of California, to be United States Circuit Judge for the Ninth Circuit.

Bill Frist, Orrin G. Hatch, Ben Nighthorse Campbell, Craig Thomas, Charles Grassley, John Cornyn, Chuck Hagel, Jim Talent, Thad Cochran, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, Larry E. Craig, Jeff Sessions, Lindsey Graham of South Carolina, and Rick Santorum.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum provided for under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. FRIST. Mr. President, I ask unanimous consent that we resume legislative session.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR THURSDAY, JULY 31, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Thursday, July 31. I further ask that following the prayer and pledge, the Journal of proceedings be approved, the time for the two leaders be reserved for their use later in the day, and the Senate then begin debate in relation to the motion to invoke cloture on the nomination of William Pryor, to be U.S. Circuit Judge for the Eleventh Circuit, with the time until 10 a.m. equally divided between the chairman and the ranking member of the Judiciary Committee, or their designees; provided that at 10 a.m. the Senate proceed to the vote on the motion to invoke cloture.

I further ask unanimous consent that following the cloture vote, regardless of the outcome, the Senate resume consideration of S. 14, the Energy bill.

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

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow morning the Senate will debate the cloture motion relating to the Pryor nomination until 10 a.m. Following that debate, the Senate will proceed with the cloture vote. Therefore, the first vote of tomorrow's session will be at 10 a.m.

Following the cloture vote, the Senate will resume consideration of S. 14, the Energy bill. It is the chairman's intention to continue to work through amendments tomorrow, and Senators should expect votes throughout the day. As a reminder, cloture was filed in relation to the bill tonight, and that cloture vote will occur on Friday morning.

We have a lot of work to complete prior to adjourning for the scheduled recess. I encourage all Members to make themselves available for a busy day tomorrow.

Mr. REID. Mr. President, if I can say briefly to the majority leader—I am speaking only for this Senator; the ultimate decision will be made, of course,

by the distinguished Democratic leader—from what has gone on today and the fact the distinguished majority leader has filed cloture on still another judge, I do not think there will be much done in the way of the Energy bill tomorrow on this side. We have to get ready for the Kuhl nomination, about which the two Senators from California feel very strongly.

I know it is the chairman's intention to work through amendments tomorrow on S. 14, but I think there will be a lot of other issues done and there will not be amendments offered on that bill. As I indicated when I started this brief statement, the ultimate decision will be made by Senator DASCHLE, but I am giving the majority my thoughts this evening.

Mr. FRIST. Mr. President, I thank the Senator. I have talked to both the Democratic leader and the chairman, and we agree after the cloture vote to go to the bill to work through the amendments. I am very hopeful over the course of the morning and over the course of the day that we will be able to make substantial progress on this important bill.

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate recess under the previous order.

There being no objection, the Senate, at 10:17 p.m., recessed until Thursday, July 31, 2003, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate July 30, 2003:

DEPARTMENT OF STATE

JAMES CASEY KENNY, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO IRELAND.

PAMELA P. WILLEFORD, OF TEXAS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWITZERLAND, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE PRINCIPALITY OF LIECHTENSTEIN.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CRISTINA BEATO, OF NEW MEXICO, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, SUBJECT TO THE QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS, AND TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES, VICE EVE SLATER, RESIGNED.

THE JUDICIARY

GEORGE W. MILLER, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR THE TERM OF FIFTEEN YEARS, VICE JAMES T. TURNER, TERM EXPIRED.

F. DENNIS SAYLOR IV, OF MASSACHUSETTS, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS, VICE ROBERT E. KEETON, RETIRED.

ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. JERRY M. RIVERA, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064.

To be major

STEPHEN W. AUSTIN, 0000
PATRICK R. BASAL, 0000
DAVID S. BOWERMAN, 0000
CLAUDE W. BRITTIAN, 0000
STEPHEN L. BROADUS, 0000
ANDREW W. CHOI, 0000
JOHN CHUN, 0000
DOYLE M. COFFMAN, 0000
CLOYD L. COLBY, 0000
TAMMIE E. CREWS, 0000
STEPHEN G. CRUYS, 0000
PETER O. DISSMORE, 0000
BETH M. ECHOLS, 0000
STEVEN R. FIRTKO, 0000
MARK A. FREDERICK, 0000
ALBERT J. GHERGICH JR., 0000
ROBERT B. GILLETTE, 0000
WILLIAM C. HARRISON, 0000
DARRYL E. HOLLOWELL, 0000
MILTON JOHNSON, 0000
MARK R. JOHNSTON, 0000
GARRY R. KERR, 0000
WILLIAM R. KILMER, 0000
JOHN W. KISER JR., 0000
JOSEPH H. KO, 0000
VICTORIO S. LANUEVO, 0000
DOUGLAS R. LAX JR., 0000
SAMUEL S. LEE, 0000
DAVID M. LOCKHART, 0000
GIAN S. MARTIN, 0000
TIMOTHY S. MEADOR, 0000
DENISE S. MERRITT, 0000
MARK E. MOSS, 0000
SAMUEL H. MURRAY, 0000
ROBERT NAY, 0000
LEE W. NELSON, 0000
DARIN A. NIELSEN, 0000
PABLO PEREZMAISONET, 0000
KEVIN M. PIES, 0000
SCOTT RIEDEL, 0000
CHARLES B. RIZER, 0000
STEVEN J. ROBERTS, 0000
PERRY J. SCHMITT, 0000
DAVID L. SHOFFNER, 0000
JERRY C. SIEG, 0000
DAVID L. SPEARS, 0000
SID A. TAYLOR SR., 0000
HENRY T. VAKOC, 0000
EARL W. VANDERHOFF, 0000
JOSEPH F. VIEIRA III, 0000
DAVID E. WAKE, 0000
DALLAS M. WALKER, 0000
DAVID G. WAWERU, 0000
NATHAN L. ZIMMERMAN, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203 AND 12211:

To be colonel

MICHAEL J BULLOCK, 0000
DANIEL E CAMERON, 0000
STEPHEN M DOYLE, 0000
SHERYL E GORDON, 0000
LEODIS T JENNINGS, 0000
CHRISTOPHER R KEMP, 0000
ELTON LEWIS, 0000
JAMES F MULVEHILL, 0000
RAYMOND F SHIELDS JR., 0000
PAUL A TRAPANI, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be captain

STEPHEN M. SAIA, 0000

To be commander

LINDA C. C. CHAN, 0000
CHRISTOPHER J. COBB, 0000
KENNETH J. KELLY, 0000
FERNANDO MORENO, 0000
JOHN T. NEFF, 0000
LOREN J. STEENSON, 0000

To be lieutenant commander

RICHARD D BERGTHOLD, 0000
VORRICE J. BURKS, 0000
JACK L CARVER, 0000
LAURIE A. HALE, 0000
MELVIN J. HENDRICKS, 0000
SCOTT D. LOESCHKE, 0000
MICHAEL J LYDON, 0000
WAYNE A. MACRAE, 0000
JAMES F. MCALLISTER, 0000
CARLOS B. ORTIZ, 0000
JOHN A. RALPH, 0000
MICHAEL J. RECKLING, 0000
RANDALL H. RUSSELL, 0000
JEFFREY N. SAVILLE, 0000
MICHAEL S. SEXTON, 0000
BRIAN J. STAMM, 0000
JOHN A. SWANSON, 0000
SCOTT A SWOPE, 0000
DAVID A. TUBLEY, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

ROLAND E. ARELLANO, 0000
LEA A. BEILMAN, 0000
JO A. J. BLANDO, 0000
LANNY L. BOSWELL JR., 0000
MARK J. BOURNE, 0000
JAMES C. BRENNAN, 0000
CHRISTINE L. CONGDON, 0000
GLENN C. CONTE, 0000
ALBERT E. COOMBS, 0000
ANTHONY P. DORAN, 0000
MICHAEL E. EBY, 0000
DEMETRI ECONOMOS, 0000
ANTHONY W. FRABUTT, 0000
DAVID L. HAMMELL, 0000
LINDA S. HITE, 0000
PHILLIP E. JACKSON, 0000
WILSON G. KNIGHT, 0000
TRACY J. KOLOSIK, 0000
KIM L. LEFEBVRE, 0000
MARGARET A. LLUY, 0000
GARY W. MOSMAN, 0000
RONALD A. NOSEK JR., 0000
REGINA P. ONAN, 0000
KELLY S. PAUL, 0000
JAMES B. POINDEXTER III, 0000
MARY C. POLKOSKI, 0000
CELIA A. QUIVERS, 0000
ROBERT A. RAHAL, 0000
DARIN P. ROGERS, 0000
MARK C. RUSSELL, 0000
WILLIAM E. SCHUTT, 0000
ALAN V. SIEWERTSEN, 0000
LESLIE L. SIMS, 0000
ANNA H. STALCUP, 0000
CARL V. TRESNAK, 0000
RESA L. WARNER, 0000
DANIEL W. WATTS, 0000
MARVA L. WHEELER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

VIDA M. ANTOLINJENKINS, 0000
STEVEN M. BARNEY, 0000
MICHAEL M. BATES, 0000
KEVIN M. BREW, 0000
KENNETH B. BROWN, 0000
FRANCIS J. BUSTAMANTE, 0000
JAMES R. CRISFIELD JR., 0000
JEFFREY A. FISCHER, 0000
STEPHEN A. JAMROZY, 0000
RANDALL G. JOHNSON, 0000
TODD M. KRAFT, 0000
SCOTT J. LAURER, 0000
PAUL C. LEBLANC, 0000
JONATHAN S. THOW, 0000
JONATHAN H. WAGSHUL, 0000
DOMINICK G. YACONO JR., 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

JAMES J. ANDERSON, 0000
CHARLES R. BAILEY, 0000
PATRICK W. BLESCH, 0000
GEORGE D. BOWLING, 0000
CATHERINE L. BUTLER, 0000
WILBERT R. BYNUM, 0000
JAMES F. COONEY, 0000
MARK P. DIBBLE, 0000
TEDDIE L. DYSON, 0000
ANDREW C. ESCRIVA, 0000
DIONISIO S. GAMBOA, 0000
MICHAEL J. GARDELLA, 0000
RUDOLPH K. GEISLER, 0000
PAUL A. GODEK, 0000
SHAWN D. GRUNZKE, 0000
MICHAEL S. HANSEN, 0000
ERNEST D. HARDEN JR., 0000
CARL R. HERRON, 0000
SCOTT J. HOFFMAN, 0000
ARISTIDES ILIAKIS, 0000
MICHAEL P. KOLSTER, 0000
RICKY A. KUSTURIN, 0000
THOMAS J. LACOSS, 0000
JEFFREY S. LECLAIRE, 0000
JAMES M. LOWTHER, 0000
JOSEPH F. MAHAN, 0000
MATTHEW K. MARTIN, 0000
PAUL E. MARTIN, 0000
KENNETH W. MCKINLEY, 0000
JAMES W. MELONE, 0000
MIGUEL D. MIRANO II, 0000
JOSEPH D. NOBLE JR., 0000
DAVID C. NYSTROM, 0000
JOAN R. OLDMIXON, 0000
TIMOTHY L. PHILLIPS, 0000
MARK R. PIMPO, 0000
FRANK M. RENDON, 0000
DAWN D. RICHARDSON, 0000
WALTER W. ROBOHN, 0000
RICHARD P. RUIZ, 0000
DANIEL P. SEEP, 0000
MARCOS A. SEVILLA, 0000
MELVIN A. SHAFER, 0000
ANTHONY A. SORELL, 0000
DEBORAH A. STARK, 0000
VAUGHN L. STOCKER, 0000
KEITH E. SYKES, 0000
MICHAEL L. TAYLOR, 0000
TIMOTHY J. THATE, 0000
HARRY T. THETFORD JR., 0000
MICHAEL E. THOMAS, 0000
BARBARA D. TUCKER, 0000
JOSEPH M. VITELLI, 0000

DEREK K. WEBSTER, 0000
DONALD J. WILLIAMS, 0000
JOHN F. ZOLLO, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

MICHAEL T. AKIN, 0000
KARLYNA L. D. ANDERSEN, 0000
JOEL M. APIDES, 0000
THOMAS E. BATES, 0000
LYNN L. BEACH, 0000
WALTER S. BEW, 0000
HEATHER I. BLOMELEY, 0000
CARLOS V. BROWN, 0000
WILLIAM C. BRUNNER, 0000
MARGARET CALLOWAY, 0000
BRETT B. CARMICHAEL, 0000
WAYNE A. CAROLEO, 0000
DAVID T. CARPENTER, 0000
BROOKS D. CASH, 0000
TIMOTHY L. CLENNEY, 0000
DAVID W. CLINE, 0000
JOHN P. COLMENARES, 0000
MICHAEL J. COLSTON, 0000
CATHERINE S. COPENHAVER, 0000
GLEN C. CRAWFORD, 0000
RHODEL F. DACANAY, 0000
MASON X. DANG, 0000
SUBRATO J. DEB, 0000
JOHN E. DEORDIO, 0000
JUDITH M. DICKERT, 0000
JEROME G. ENAD, 0000
JOSEPH W. FLANAGAN, 0000
JONATHAN T. FLEENOR, 0000
BRYAN A. FOX, 0000
MICHAEL I. FREW, 0000
DARIN S. GARNER, 0000
MARILYN L. GATES, 0000
WILLIAM R. GRAF, 0000
WALTER M. GREENHALGH, 0000
MICHAEL N. HABIBE, 0000
MARK E. HAMMETT, 0000
KEITH A. HANLEY, 0000
JENIFER L. HENDERSON, 0000
ERIC P. HOFMEISTER, 0000
MICHAEL T. HOPKINS, 0000
THANH T. HUYNH, 0000
MICHAEL M. JACOBS, 0000
GREGORY W. JONES, 0000
BENJAMIN W. JORDAN, 0000
FREDERICK C. KASS, 0000
DAVID J. KEBLISH, 0000
JOHN S. KENNEDY, 0000
WILLIAM J. KLORIG, 0000
MARK A. KOBELJA, 0000
KAREN J. KOPMANN, 0000
CHARLES S. KUZMA, 0000
PATRICK R. LARABY, 0000
CATHY T. LARRIMORE, 0000
THOMAS R. LATENDRESSE, 0000
JOSEPH T. LAVAN, 0000
PATRICK L. LAWSON, 0000
NORMAN LEE, 0000
GREGORY S. LEPKOWSKI, 0000
CON Y. LING, 0000
FRANCESCA K. LITOW, 0000
JASON D. MAGUIRE, 0000
RICHARD T. MAHON, 0000
MARTIN A. MAKELA, 0000
CHRISTOPHER J. MCARTHUR, 0000
JOHN M. MCCURLEY, 0000
FREDERICK J. MCDONALD, 0000
MICHAEL T. MCHALE, 0000
DAVID B. MCLAREN, 0000
ROBERT D. MENZIES, 0000
MARK E. MICHAUD, 0000
ALLEN O. MITCHELL, 0000
MELISSA A. MOHON, 0000
JOHN B. NEWMAN, 0000
SANDOR S. NIEMANN, 0000
DONALD E. OLOFSSON, 0000
JOHN J. PAPE, 0000
RICHARD J. PAVER, 0000
TODD B. PETERSON, 0000
DAVID S. PLURAD, 0000
TIMOTHY J. POREA, 0000
MAE M. POUGET, 0000
KENNETH G. PUGH, 0000
SCOTT W. PYNE, 0000
CHRISTOPHER S. QUARLES, 0000
RICHARD D. QUATTRONE, 0000
TIMOTHY R. QUINER, 0000
JEFFREY D. QUINLAN, 0000
JUAN P. RIVERA, 0000
STACY J. ROGERS, 0000
MARY A. RONALD, 0000
JASON J. ROSS, 0000
MARY K. RUSHER, 0000
JOHN W. SANDERS III, 0000
ELIZABETH K. SATTER, 0000
BRYAN P. SCHUMACHER, 0000
JAVAID A. SHAD, 0000
RICHARD L. SIEMENS, 0000
ANDREW E. SIMAYS, 0000
ROBERT C. STABLEY, 0000
ZSOLT T. STOCKINGER, 0000
MICHAEL J. STRUNC, 0000
KEITH A. STUESSI, 0000
WILLIAM SUKOVICH, 0000
DAVID A. TARANTINO JR., 0000
GREGORY J. TARMAN, 0000
MICHAEL D. THOMAS, 0000
WILLIAM E. TODD, 0000
JOHN M. TRAMONT, 0000
SAMUEL K. TSANG, 0000
GUIDO F. VALDES, 0000
PETER WECHGELAER, 0000
CHRISTOPHER WESTROPP, 0000
PERRY N. WILLETTE, 0000
ROBERT O. WOODBURY, 0000
CLIFTON WOODFORD, 0000
JON S. WOODS, 0000
PETER G. WOODSON, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

RICHARD E. AGUILA, 0000
MARC E. A. ARENA, 0000
ELDON G. BLOCH, 0000
SIDNEY L. BOURGEOIS, 0000
JERRY N. BURTON JR., 0000
STEPHEN L. CHRISTOPHER, 0000
SCOTT A. CURTICE, 0000
TODD L. EVANS, 0000
RODNEY L. GUNNING, 0000
BRADLEY H. HAJDIK, 0000
SHEHERAZAD A. HARTZELL, 0000
MILAN J. JUGAN JR., 0000
DONALD A. LONERGAN, 0000
THOMAS F. MOONEY III, 0000
BRENT E. NEUBAUER, 0000
CHARLES W. PATTERSON, 0000
THOMAS M. PRATER, 0000
SCOTT D. THOMAS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

LINDA M. ACOSTA, 0000
UNKYONG S. ARCHER, 0000
KHIN AUNGTHEIN, 0000
EDWARD S. BATES JR., 0000
ALLISON R. BEATTY, 0000
TERRY V. BOLA, 0000
ELIZABETH N. BOULETTE, 0000
JANET M. BRADLEY, 0000
MARY A. BRANTLEY, 0000
CATHALEEN A. CANLER, 0000
DAVID T. CASTELLANO, 0000
JAY E. CHAMBERS, 0000
KATHERINE H. CONNOLLY, 0000
RACHELE A. CRUZ, 0000
DEBRA A. DELEO, 0000
DAVID A. FARMER, 0000
TRISHA L. FARRELL, 0000
TERENCE FINNERTY, 0000
SHELLY A. FOLTZ, 0000
ANN L. FORREST, 0000
JEAN B. FREEMAN, 0000
CYNTHIA J. GANTT, 0000
DEBRA C. GARDNER, 0000
JANET M. K. GEHRING, 0000
KIRSTEN L. HARVISON, 0000
SANDRA HEARN, 0000
JAMES T. HOSACK, 0000
LORETTA A. HOWERTON, 0000
RICHARD W. JOHNSON, 0000
RICHELLE L. KAY, 0000
TINA L. KEY, 0000
LORI J. KRAYER, 0000
RICHARD S. MAFFEO, 0000
JOHN T. MANNING, 0000
SANDRA A. MASON, 0000
CAROLYN R. MCGEE, 0000
BRADLEY A. MCGLOIN, 0000
MICHELLE L. MCKENZIE, 0000
CHRISTINE T. MILLER, 0000
ANNE M. MITCHELL, 0000
JOLENE M. MOORE, 0000
ALICIA A. MORRISON, 0000
JOHN H. NAGELSCHMIDT, 0000
IRENE M. NIEDERHUT, 0000
ANGELA S. NIMMO, 0000
MARY K. NUNLEY, 0000
MARIA E. PERRY, 0000
SABRINA L. PUTNEY, 0000
ANN RAJEWSKI, 0000
SHIRLEY L. RUSSELL, 0000
AMANDA G. SIERRA, 0000
HARRY F. SMITH III, 0000
MARK E. SNIDER, 0000
CONSTANCE E. STAMATERIS, 0000
JAMES X. STOBINSKI, 0000
THOMAS A. SWEET, 0000
SARA J. THELIN, 0000
NELIDA R. TOLEDO, 0000
CYNTHIA D. TURNER, 0000
VICKIE A. WEAVER, 0000
RAYMOND D. WILSON, 0000
HILARY V. WONG, 0000
ANNA L. WRIGHT, 0000
JOAN L. WRIGHT, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

LEANNE K. AABY, 0000
TONY L. AMMONS JR., 0000
SHAWN J. BERGAN, 0000
KEVIN L. BROWN, 0000
DAVID R. BUSTAMANTE, 0000
LEONARD W. W. COOKE, 0000
THOMAS F. GEORGE, 0000
JOSEPH E. GREALISH, 0000
BETH L. HARTMANN, 0000
LEWIS S. HURST, 0000
STEPHANIE M. JONES, 0000
CHRISTOPHER J. LACARIA, 0000
IAN C. LANGE, 0000
CHRISTOPHER S. LAPLATNEY, 0000
CHRISTINE W. LONIE, 0000
SCOTT W. LOWE, 0000
MARKO MEDVED, 0000
ROBERT N. MORRISON, 0000
SHARON B. OBY, 0000
PAUL J. ODENTHAL, 0000
KENNETH T. OGAWA, 0000
LAURENCE J. READAL, 0000
CHARLES R. REUNING, 0000
DAVID J. ROBILLARD, 0000
DALE M. ROHRBACH, 0000
THOMAS P. SCHEUERMANN, 0000
EDWARD G. SEWESTER, 0000
CHARLES M. SMITH, 0000
SCOTT G. SMITH, 0000
MATTHEW E. SUESS, 0000
MARSHALL T. SYKES, 0000
DANIEL J. THERRIEN, 0000
ROBERT B. TOMIAK, 0000
DEAN A. TUFTS, 0000
RICHARD L. WHIPPLE, 0000
GARY L. WICK, 0000
MICHAEL J. ZUCCHERO, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

LEE A. AXTELL, 0000
MILES J. BARRETT, 0000
ROBERT A. CALLISON, 0000
JOHN D. DENTON, 0000
TIMOTHY R. EICHLER, 0000
BRYAN K. FINCH, 0000
WAYNE R. FREIBERG, 0000
MILTON D. GIANULIS, 0000
DAVID L. GIBSON, 0000
THOMAS P. HALL, 0000
VAL J. JENSEN, 0000
RONALD KAWCZYNSKI, 0000
MICHAEL S. KLEPACKI, 0000
TIMOTHY J. KOESTER, 0000
GLEN A. KRANS, 0000
GUY M. LEE, 0000
ARTHUR H. LOGAN, 0000
ROBERT K. MCGAHA, 0000
MICHAEL A. MIKSTAY, 0000
DAVID A. MUDD, 0000
WESLEY B. SLOAT, 0000
JOHN A. SWANSON, 0000
GREGORY N. TODD, 0000
DALE C. WHITE, 0000
DENNIS W. YOUNG, 0000