

Clinton won the election, and he has a right to nominate who he wants as long as they are within the mainstream. That does not mean they are going to agree with me philosophically. There are a lot of people in the mainstream who are center and left of center who have a right to serve, as people who are right of center have a right to serve, and I am not going to impose my ideology on somebody else's nominees.

That is what is going on today. It is an ideological litmus test, and it is now infecting this body to the detriment of the Senate.

I hope cooler heads will prevail, and that those of us who showed restraint and did not vote for filibusters, voted for cloture on nominees we did not like—that there will be those who will stand up and do the same on the other side of the aisle in the future.

Mr. President, I yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### FILIBUSTER HISTORY

Mr. DURBIN. Mr. President, I know it is late, and I will be very brief. I want to make a quick response to my colleague and friend from Pennsylvania, Senator SANTORUM. I am sorry I had to leave the floor while he was speaking.

What I am about to say I would be happy to say with Senator SANTORUM in the Chamber and would be happy to respond to tomorrow. The Senator from Pennsylvania made the point that he thinks the golden rule here is, the principle here is that every judicial nominee is entitled to a majority vote up or down.

That is an interesting idea, and it might be appealing to some people if they do not know the rules of the Senate. For 214 years, we have said if you bring an amendment, a bill, or a nomination to the floor of the Senate, it is subject to Senate rules. And Senate rules are very clear. Any Senator can take the floor and begin a debate and hold the floor as long as that Senator physically can, unless 60—now 60 members of the Senate—vote otherwise. So you need an extraordinary majority—60 Senators—to stop a filibuster. That is the way it has always been.

In the beginning it was different. Senators could not stop a filibuster until 1919. In 1919 it took 67 votes; a few years back we changed that to 60 votes. But it has always taken more than a majority to stop a filibuster.

In "Mr. Smith Goes to Washington," Jimmy Stewart is on the floor, holding the floor as long as he did. That is the Senate. That is the tradition of the Senate.

The Senator from Pennsylvania says it has always been a majority vote. Sadly, he is mistaken. There has always been the opportunity for filibuster on a nomination.

So he was mistaken in that assertion.

The second thing the Senator from Pennsylvania was mistaken about was his oft-repeated comments that never, ever, not once in the history of the Senate—we hear it from the Senator from Pennsylvania and others has a filibuster been used on a judicial nomination. It has never been done until the Democrats recently did it to a number of President Bush's nominees.

Unfortunately, again, history is not on the side of the Senator from Pennsylvania. On 12 different occasions, beginning in 1881, filibusters have been used to stop judicial nominations. In 1881, it was Stanley Matthews to be a Supreme Court Justice; 1968, Abe Fortas to be Chief Justice of the Supreme Court was subjected to a filibuster; right on down through the Clinton administration, when, in fact, on two different occasions—maybe more, as I look at this list—there were filibusters applied to Clinton nominees. So for the Republican side of the aisle to consistently state what history tells us is not true is unfortunate.

I ask unanimous consent to have printed in the RECORD this history of filibusters and judges so anyone who follows congressional proceedings can read the names and circumstances for each and every judge who has been subjected to a filibuster in the history of the Senate.

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

#### HISTORY OF FILIBUSTERS AND JUDGES

Prior to the start of the George W. Bush administration in 2001, the following 11 judicial nominations needed 60 (or more) votes—cloture—in order to end a filibuster:

1881: Stanley Matthews to be a Supreme Court Justice.

1968: Abe Fortas to be Chief Justice of the Supreme Court (cloture required  $\frac{2}{3}$  of those voting).

1971: William Rehnquist to be a Supreme Court Justice (cloture required  $\frac{2}{3}$  of those voting).

1980: Stephen Breyer to be a Judge on the First Circuit Court of Appeals.

1984: J. Harvie Wilkinson to be a Judge on the Fourth Circuit Court of Appeals.

1986: Sidney Fitzwater to be a Judge for the Northern District of Texas.

1986: William Rehnquist to be Chief Justice of the Supreme Court.

1992: Edward Earl Carnes, Jr. to be a Judge on the Eleventh Circuit Court of Appeals.

1994: H. Lee Sarokin to be a Judge on the Third Circuit Court of Appeals.

1999: Brian Theodore Stewart to be a Judge for the District of Utah.

2000: Richard Paez to be a Judge on the Ninth Circuit Court of Appeals.

2000: Marsha Berzon to be a Judge on the Ninth Circuit Court of Appeals.

Because of a filibuster, cloture was filed on the following two judicial nominations, but was later withdrawn:

1986: Daniel Manion to be a Judge on the Seventh Circuit Court of Appeals Senator Biden told then Majority Leader Bob Dole

that "he was ready to call off an expected filibuster and vote immediately on Manion's nomination."—Congressional Quarterly Almanac, 1986.

1994: Rosemary Barket to be a Judge on the Eleventh Circuit Court of Appeals "... lacking the votes to sustain a filibuster, Republicans agreed to proceed to a confirmation vote after Democrats agreed to a day-long debate on the nomination."—Congressional Quarterly Almanac, 1994.

Following are comments by Republicans during the filibuster on the Paez and Berzon nominations in 2000, confirming that there was, in fact, a filibuster:

"... it is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez."—Senator Bob Smith, March 9, 2000.

"So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role."—Senator Bob Smith, March 7, 2000.

"Indeed, I must confess to being somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on the nomination."—Senator Orrin Hatch, March 9, 2000, when a Senator offered a motion to indefinitely postpone the Paez nomination after cloture had been invoked.

In 2000, during consideration of the Paez nomination, the following Senator was among those who voted to continue the filibuster: Senator Bill Frist—Vote #37, 106th Congress, Second Session, March 8, 2000.

Mr. DURBIN. Mr. President, the Senator from Pennsylvania is very discreet in how he explains his view of dealing with judges, that every judge should be allowed a majority up-or-down vote. That is not a bad concept if that really was what the Senator from Pennsylvania could point to in his own record. Under President Clinton's administration, nine of the President's judicial nominees to the Commonwealth of Pennsylvania were confirmed by the Senate, while eight were never even given hearings before the Judiciary Committee. So the Senators who are now begging for majority votes and majority rules thought nothing of cloturing and burying these judicial nominees under the Clinton administration, to the point where they had no possibility of being confirmed.

Let me be specific. John Binger was nominated by President Clinton. Senator SANTORUM exercised his discretion over nominations in his State and held up this nomination for 2 years, until Mr. Binger withdrew.

Robert Freedberg, another nominee by President Clinton. Senator SANTORUM delayed the entire slate of judicial candidates, saying the President didn't honor an earlier agreement to nominate a particular Pittsburgh attorney whom he, Senator SANTORUM, wanted.

Lynette Norton. As was reported by the Pittsburgh Post Gazette on July 22, 2000:

Sen. Rick Santorum insisted yesterday the Senate will not act on any nomination for the U.S. District Court here until next presidential administration...

He was very clear on what his agenda was: it was to hold up nominations that were going to be filled by President Clinton until, hopefully, in his

eyes, a Republican President was elected.

Repeatedly, Senator SANTORUM used his own form of a filibuster to deny even a hearing or a vote in the Senate to these judicial nominees. Now he stands aghast, appalled, incredulous, that anyone would oppose a judicial nominee of President Bush.

We should stand by the traditions of the Senate. Let's not change the rules in the middle of the game. Let's not violate the time-honored principle of checks and balances which says the Senate as an institution will have the last word on lifetime appointments to the Federal bench.

Even though President Bush has been successful with over 95 percent of his nominees being approved by the Senate, mark my words, a few of them should not have been approved for lifetime appointments. Our view on our side of the aisle, both liberal and conservative, a handful went too far. Their positions on the role of Government in protecting our health and safety, the role of Government in protecting our environment, the rights of women, privacy under our Constitution, their views were so extreme and so radical they were not deserving, at least to the mind of many of my colleagues, to have a lifetime appointment to the Federal bench.

It is best when in doubt to stick with the Constitution. It is best when in doubt to stick with the traditions of the Senate. It is best when in doubt to stick with the filibuster, which requires compromise, requires bipartisanship, and moves us to a point where we can and must work together to achieve goals of this Nation and to serve the people who were kind enough to give us this great opportunity.

#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m., Thursday, April 28, 2005.

Thereupon, the Senate, at 6:59 p.m., adjourned until Thursday, April 28, 2005 at 9:30 a.m.

### NOMINATIONS

Executive nominations received by the Senate April 27, 2005:

#### EXECUTIVE OFFICE OF THE PRESIDENT

BEN S. BERNANKE, OF NEW JERSEY, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE NICHOLAS GREGORY MANKIW, RESIGNED.

#### UNITED STATES INTERNATIONAL TRADE COMMISSION

SHARA L. ARANOFF, OF MARYLAND, TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION FOR A TERM EXPIRING DECEMBER 16, 2012, VICE MARCIA E. MILLER, TERM EXPIRED.

#### DEPARTMENT OF STATE

DAVID HORTON WILKINS, OF SOUTH CAROLINA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO CANADA.

#### NATIONAL LABOR RELATIONS BOARD

DENNIS P. WALSH, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2009. (RE-APPOINTMENT)

#### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral

REAR ADM. (LH) ALAN S. THOMPSON, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral

REAR ADM. (LH) NANCY J. LESCAVAGE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral

REAR ADM. (LH) JEFFREY A. BROOKS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral

REAR ADM. (LH) ROBERT B. MURRETT, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral (lower half)

CAPT. VICTOR C. SEE, JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral (lower half)

CAPT. CHRISTINE M. BRUZEK-KOHLER, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral (lower half)

CAPT. MARK W. BALMERT, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral (lower half)

CAPT. RAYMOND E. BERUBE, 0000

CAPT. JOHN J. PRENDERGAST III, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

#### To be rear admiral (lower half)

CAPT. KEVIN M. MCCOY, 0000

CAPT. WILLIAM D. RODRIGUEZ, 0000

### CONFIRMATIONS

Executive nominations confirmed by the Senate Wednesday, April 27, 2005:

#### DEPARTMENT OF AGRICULTURE

CHARLES F. CONNER, OF INDIANA, TO BE DEPUTY SECRETARY OF AGRICULTURE.

#### DEPARTMENT OF STATE

HOWARD J. KRONGARD, OF NEW JERSEY, TO BE INSPECTOR GENERAL, DEPARTMENT OF STATE.

#### ENVIRONMENTAL PROTECTION AGENCY

LUIS LUNA, OF MARYLAND, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

#### MISSISSIPPI RIVER COMMISSION

MAJOR GENERAL DON T. RILEY, UNITED STATES ARMY, TO BE A MEMBER AND PRESIDENT OF THE MISSISSIPPI RIVER COMMISSION.

BRIGADIER GENERAL WILLIAM T. GRISOLI, UNITED STATES ARMY, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

#### THE JUDICIARY

J. MICHAEL SEABRIGHT, OF HAWAII, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII.

#### IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING WITH CURTIS L. SUMROK AND ENDING WITH JED R. BOBA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 14, 2005.

COAST GUARD NOMINATIONS BEGINNING WITH MICHAEL T. CUNNINGHAM AND ENDING WITH DAVID K. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 14, 2005.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NOMINATIONS BEGINNING WITH PAUL ANDREW KUNICKI AND ENDING WITH LINDSEY M. VANDENBERG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 4, 2005.