

health insurance, but the cost has tripled—tripled—with the expiration of COBRA subsidies. Richard should be able to worry about his family, to be able to help his wife through her cancer treatment. He should not have to worry about the political games being played in Washington and the skyrocketing cost he is looking at. He and his wife should be focusing on her care and her treatment. But no, sadly, obstruction and political point-scoring now come first for some of our colleagues.

Margaret, Gretchen, and Richard—and all those across the country who are facing similar situations—are wondering why they have to pay the price for Republicans to make this point about the deficit. Why them? When it was Halliburton's no-bid contracts in Iraq, for which money was borrowed to fund them, where was the concern about the deficit then? For Halliburton's no-bid contracts, the deficit is no problem, evidently. When it was Part D's colossal handout to the pharmaceutical industry—borrowed money—where was the concern then about the deficit? Not when it is the big interests.

When it was the tax cuts for CEOs—big tax cuts for CEOs, for big bankers, for derivatives traders, for hedge fund managers—where then was the concern about the deficit when those tax cuts were passed unfunded?

When the Bush administration inherited from the last Democratic President a balanced budget predicted to yield a zero national debt during the course of the Bush administration—a zero national debt during the course of the Bush administration—and instead the Republicans left us with \$12 trillion in national debt, where then was the concern about the deficit?

As one of my colleagues has said, this has been described as a point of principle. The way a principle is defined is that you always stand by it. If it is a sometime thing, it may be a lot of things; it may be an opinion, it may be a maneuver, it may even be an honestly held opinion, but it is not a principle if you only follow it selectively. If the only time you follow it is when struggling, working people are in the crosshairs. But when it is Haliburton's no-bid contracts, when it is tax cuts for CEOs and big bankers and fancy derivatives traders, and when it is the pharmaceutical industry, then it is all fine? That is not a principle. It may be a lot of things but it is no principle.

I urge my colleagues to put politics aside, to do what is right, and to help the millions of Americans who are so badly in need of a little help through this economic downturn that was no fault of their own—hard-working people, trapped in this recession through no fault of their own. I implore my Republican colleagues to start working constructively with us to end this unemployment crisis, to put people back to work, and to help those who are in such dire circumstances now through

no fault of their own. That is what we are sent here to do and that is what I will keep fighting for.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The Senate is in a period of morning business.

Mr. LEAHY. Has all time been used in morning business?

The ACTING PRESIDENT pro tempore. No, it has not.

#### CONCLUSION OF MORNING BUSINESS

Mr. LEAHY. Madam President, I ask to yield back any time remaining in morning business on either side.

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

Morning business is closed.

#### EXECUTIVE SESSION

##### NOMINATION OF BARBARA MILANO KEENAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The legislative clerk read the nomination of Barbara Milano Keenan, of Virginia, to be United States Circuit Judge for the Fourth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12:15 will be equally divided and controlled between the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS.

The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, the nomination of Justice Barbara Keenan of Virginia to the Fourth Circuit should be noncontroversial; her nomination should have been confirmed long ago. She has the support of her home State Senators. She has the support of Virginians from both parties, and many others. She was approved unanimously by the Senate Judiciary Committee over 4 months ago.

I suspect that like the confirmations of Judge Viken, Judge Lange, Judge Berger, Judge Honeywell, Judge Reiss, Judge Kallon, Judge Nguyen, Judge Seeborg, Judge Gee, Judge Peterson, Judge Martin and Judge Greenaway, this nomination could well be approved unanimously. Instead, in what has become a sorry and unacceptable attitude on the part of Republicans, she has been filibustered. This nomination should have been approved unanimously. We will now have to vote to bring cloture on something that would normally have been done on a voice

vote. I am willing to predict she will get an overwhelming vote when they finally allow us to vote on her.

Because of what has happened with these filibusters, the Senate is far behind where we should be in filling judicial vacancies, vacancies that skyrocketed to be more than 100 and more have been announced. We need to do better. The American people deserve better.

Here it is, March 2. On March 2 of President Bush's first term the Senate had confirmed 39 Federal circuit and district court nominations. We, the Democrats, were in the majority. We moved very hard to get those 39 through. That included the period of the 9/11 attacks and the anthrax attack upon the Senate. In spite of all the obstacles, by March 2, Senate Democrats had moved forward to help confirm 39 of President Bush's judicial nominees.

Although the Senate Judiciary Committee has favorably reported 29 of President Obama's Federal circuit and district court nominees to the Senate for final consideration, because of Republican obstruction, the Senate has confirmed only 15 Federal circuit and district court nominees. So, by March 2 of the second year of President Bush's first term, 39; by March 2 of the second year of President Obama's Presidency, 15. That is more than 60 percent fewer. This is despite the fact that President Obama began sending judicial nominations to the Senate 2 months earlier than President Bush, after President Obama's 13 months in office the Senate is has confirmed only 15 Federal circuit and district court judges.

The judiciary is supposed to be out of partisan politics. This is really unacceptable. In fact, I note that during 17 months of President Bush's first term when the Democrats were in charge, we confirmed 100 of his judges. During 31 months with the Republicans in charge, they confirmed approximately 100. We worked very hard to help President Bush though.

The return, instead, is that the Republicans have filibustered nominees, judicial nominees who, when they finally get a vote, get a unanimous vote. This has created a real crisis in the judiciary. Last year's total was the fewest judicial nominees confirmed in the first year of a Presidency in more than 50 years. Those 12 Federal circuit and district court confirmations were even below the 17 the Senate Republican majority allowed to be confirmed in the 1996 session. After that Presidential election year, Chief Justice Rehnquist began criticizing the pace of judicial confirmations and the partisan Republican tactics. I hope the Chief Justice would do what Chief Justice Rehnquist, another Republican did when Republicans were slowing up judicial nominations, and speak to the need to do this.

I have spoken repeatedly to Senate leaders on both sides of the aisle and I made the following proposal: Agree to immediate votes on those judicial

nominees who have been reported by the Senate Judiciary Committee without dissent and agree to time agreements to debate and vote on the others.

We are making a mockery of the Federal judiciary by bringing in such needless partisan politics. This is my 36th year and I have been here with both Republicans and Democrats in the majority, with both Republican and Democratic Presidents. I have never seen anything like this in 36 years. It involves the judiciary in partisan politics in a way that is unprecedented, but it also shames the Senate. The American people are right to ask why they are doing this. It makes no sense.

Among the frustrations is that Senate Republicans have delayed and obstructed nominees chosen after consultation with Republican home state Senators. Despite President Obama's efforts, Senate Republicans have treated his nominees much, much worse.

I noted when the Senate considered the nominations of Judge Christina Reiss of Vermont and Mr. Abdul Kallon of Alabama relatively promptly that they should serve as the model for Senate action. Sadly, they are the exception rather than the model. They show what the Senate could do, but does not. Time and again, noncontroversial nominees are delayed. When the Senate does finally consider them, they are confirmed overwhelmingly. Of the 15 Federal circuit and district court judges confirmed, 12 have been confirmed unanimously.

That is right. Republicans have only voted against 3 of President Obama's nominees to the Federal circuit and district courts. One of those, Judge Gerry Lynch of the Second Circuit, garnered only three negative votes and 94 votes in favor. Judge Andre Davis of Maryland was stalled for months and then confirmed with 72 votes in favor and only 16 against. Judge David Hamilton was filibustered in a failed effort to prevent an up-or-down vote.

The obstruction and delay is part of a partisan pattern. Even when they cannot say "no," Republicans nonetheless demand that the Senate go slow. The practice is continuing. This is the 17th filibuster of President Obama's nominees. That does not count the many other nominees who were delayed or are being denied up-or-down votes by Senate Republicans refusing to agree to time agreements to consider even noncontroversial nominees.

Senate Republicans unsuccessfully filibustered the nomination of Judge David Hamilton of Indiana to the Seventh Circuit, despite support for his nomination from the senior Republican in the Senate, DICK LUGAR of Indiana. Republicans delayed for months Senate consideration of Judge Beverly Martin of Georgia to the Eleventh Circuit, despite her endorsement from both her Republican home State Senators. When Republicans finally agreed to her consideration on January 20, she was confirmed unanimously. Whether Jeffrey

Viken or Roberto Lange of South Dakota, who were supported by Senator THUNE, or Charlene Edwards Honeywell of Florida, who was supported by Senators MARTINEZ and LEMIEUX, virtually all of President Obama's nominees have been prevented prompt Senate action by Republican objections.

But instead of making progress by promptly considering Justice Keenan's noncontroversial nomination, we are now facing yet another Republican filibuster. There is no explanation for these delays, nor could there be. Justice Keenan is currently a justice on the Supreme Court of Virginia; she has an impressive judicial background. She has been a judge for the last 29 years—half of her life—and has served on each of the four levels of the Virginia State courts. If confirmed, Justice Keenan would be the first woman from Virginia to serve on the Fourth Circuit. She was also the first female general district court judge in Virginia, the first female circuit court judge in that State, the first woman named to the Virginia Court of Appeals, and the second female justice on the Virginia Supreme Court.

The American Bar Association's Standing Committee on the Federal Judiciary has unanimously rated her "well qualified"—its highest rating—to sit on the Fourth Circuit. The Virginia State Bar rated her "highly qualified" by unanimous vote, and bar associations throughout the State gave her their highest recommendation. Many of the lawyers who make up those associations have practiced before Justice Keenan, so their strong support of her nomination is telling.

Republican Senators should act as we acted when we worked together to reduce vacancies during the Bush administration. In fact, our work led to a reduction in vacancies in nearly every circuit. When President Bush left office, we had reduced vacancies in 9 of the 13 circuits from when President Clinton left office. One of the circuits where we succeeded in reducing vacancies was the Fourth Circuit, the circuit to which Justice Keenan has been nominated.

Like the nomination of Steven Agee of Virginia to the Fourth Circuit, confirmed in President Bush's last year in office by a Senate with a Democratic majority, Justice Keenan's nomination should be able to be confirmed without further obstruction and delay. The Senate proceeded quickly to consider the Agee nomination, even though it was a Presidential election year, because President Bush had cooperated with the home State Senators to withdraw the controversial nomination of Duncan Getchell and instead nominate Judge Agee. Mr. Getchell had been nominated over the objection of both Virginia Senators, a Republican and a Democrat, and his nomination was finally withdrawn after many wasted months. The Agee nomination also followed years of contentiousness, as President Bush insisted on nomina-

tions like those of Jim Haynes and Claude Allen. When a President from either party works with home State senators to identify noncontroversial, well-qualified nominees, the Senate should move quickly to consider them.

Regrettably, it has taken the Senate twice as long to consider Justice Keenan's nomination as it did Judge Agee's for a seat on the same Court. The Senate can and must do better for the American people and the rule of law.

There is an easy place to start. The Senate can virtually double its total by considering the 14 judicial nominees currently on the Senate Executive Calendar without additional delay. In December, I made several statements in this Chamber about the need for progress on the nominees reported by the Senate Judiciary Committee. I also spoke repeatedly to Senate leaders on both sides of the aisle and made the following proposal: Agree to immediate votes on those judicial nominees that are reported by the Senate Judiciary Committee without dissent, and agree to time agreements to debate and vote on the others.

At the time there were six judicial nominees on the Senate Executive Calendar that no Republican member of the Judiciary Committee had opposed. Republicans refused. We have considered just three of those nominations in the last 3 months. They were each confirmed unanimously, without a single Republican Senator voting or speaking against them. It should not have taken 3 months to confirm three nominees unanimously. It has become the Republican strategy of delay—delay even those nominees they support. They delayed confirmation of Judge Beverly Martin of Georgia to the Eleventh Circuit until this year. They delayed confirmation of Judge Joseph Greenaway of New Jersey to the Third Circuit until last month. Still, three of the nominees who were reported unanimously last year are still stalled on the Senate Executive Calendar awaiting Republican agreement to vote on them.

I renew my proposal. There are now eight judicial nominations on the Senate Executive Calendar that were reported from the Senate Judiciary Committee without a single dissenting vote, including Barbara Keenan. When Republicans allow the Senate to consider them, they will all be approved overwhelmingly, if not unanimously. I urge Republicans to agree to consider and confirm them today.

I further call upon Republicans to agree to time agreements on each of the other six judicial nominees ready for final Senate action. Only one Republican Senator in the Judiciary Committee voted against Judge Wynn of North Carolina; only three voted against Judge Vanaskie of Pennsylvania; only four voted against Ms. Stranch of Tennessee, who is supported by the senior Senator from Tennessee, a Republican and a member of the Senate Republican leadership. Senate Republicans should identify the time they

require to debate the nominations of Justice Butler of Wisconsin, Judge Chen of California and Judge Pearson of Ohio, who are all well-qualified nominees for district court vacancies, which are typically considered and confirmed without lengthy debate.

During the debate on Judge Martin's nomination earlier this year, several misstatements were made on the floor of the Senate. I corrected the record on January 25. More recently, during Senate consideration of Judge Greenaway's nomination, additional misstatements were made here. It may be that some Republicans were unaware of the efforts by me, the Senators from New Jersey, and the Democratic leadership to consider Judge Greenaway's nomination earlier. Republicans were repeatedly asked to agree to consider both the Martin and Greenaway nominations. The majority leader stated so on January 22, as did I on January 25. Those efforts began long before January 22. Perhaps those Republicans who say it only took 2 weeks to schedule the Greenaway vote did not know of those discussions. But it still does not answer the question of why it took 2 weeks for Republicans to agree hold a vote that was unanimous.

In addition, the record should be clear that the New Jersey Senators had indicated their support for the Greenaway nomination since it was first announced, and were in no way a source of delay. Neither Senator "refused" or "failed" to send in their consent to proceed. To the contrary, the hearing on the Greenaway nomination was in September, because I honored Republicans' request that committee not to proceed with additional hearings in the summer, while a Supreme Court nomination was being considered. The fact is that during those months, it was Senate Republicans who were unprepared to proceed to a hearing on the Greenaway nomination. There is no cause to blame the Senators from New Jersey for delays in considering that nomination. Republicans' suggestion that Democrats are delaying in their consent to advance these nominations is also more than ironic since they have never acknowledged, nor accepted, responsibility for pocket filibustering more than 60 of President Clinton's judicial nominees. In fact, when I became chairman of the Judiciary Committee, I made Senators' consent forms, or blue slips, public for the first time. I am still waiting for Republicans to agree to make public their blue slips from 1993 through 2000. Because of the change I made, the anonymous holds that obstructed so many of President Clinton's nominees did not continue under President Bush. Regrettably, unlike President Obama, his predecessor did not work with Senators of the other party on nominations. It is no secret that the reason the committee did not proceed on President Bush's nominee to the vacancy on the Third Circuit from New Jersey was because the New Jersey Senators did not consent.

So when Senator SESSIONS says that he respects me for consulting with home State Senators, and in the same statement criticizes me for consulting with home State Senators, it is a bit disturbing. When he asks me not to hold hearings and then criticizes me for supposedly delaying hearings, it is not fair. When the Republicans are not ready to proceed on a nomination and then attribute the delays to others, it is wrong. Maybe the lesson is that I should not accommodate Republican requests but press the schedule more quickly, because otherwise I risk being accused of going too slowly.

We have seen unprecedented obstruction by Senate Republicans on issue after issue—over 100 filibusters last year alone, which affected 70 percent of all Senate action. Instead of time agreements and the will of the majority, the Senate is faced with a requirement to find 60 Senators to overcome a filibuster on issue after issue. The Senate was not allowed to complete action on short extensions of unemployment insurance benefits, the Satellite Home Viewer Act, and other needed measures last week because of Republican objection. Unfortunately, we have seen the repeated abuse of filibusters, and delay and obstruction have become the norm for Senate Republicans.

Just as Senate Republicans reversed themselves when it came time to vote on the deficit reduction commission that they had sponsored; just as Senate Republicans who voted for the USA PATRIOT Act Sunset Extension Act, S. 169, which was reported by the Senate Judiciary Committee last October, have reversed themselves and abandoned it; so, too, have Senate Republicans reversed themselves on filibusters against nominations. Those who just a short time ago said that a majority vote is all that should be needed to confirm a nomination, and that filibusters of nominations are unconstitutional, have reversed themselves and now employ any delaying tactic they can. They have ratcheted up their partisanship to delay and obstruct the President's nominees—once the American people elected a Democratic President.

The Republican practice of making supermajorities the new standard to proceed to consider many non-controversial and well-qualified nominations for important posts in the executive branch, and to fill vacancies on the Federal courts, is having a debilitating effect on our government's ability to serve the American people. Hard-working Americans who seek justice in our overburdened Federal courts are the ones who will pay the price for Republicans' obstruction and delay. They deserve better.

Even after years of Republican pocket filibusters that led to skyrocketing judicial vacancies, Democrats did not practice this kind of obstruction and delay in considering President Bush's nominations. We worked hard to reverse the Republican obstructionism.

In the second half of 2001, the Democratic majority in the Senate proceeded to confirm 28 judges. During just the second year of President Bush's first term, the Democratic Senate majority confirmed 72 judicial nominations and helped reduce the vacancies left by Republican obstructionism of President Clinton's judicial nominees from over 110 to 59 by the end of 2002. Overall, as I have noted, in the 17 months that I chaired the Senate Judiciary Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominees. By comparison, the total number of Federal circuit and district court judges confirmed during the 13 months President Obama has been in office is barely 15 percent of that total.

Senate Democrats continued to work to reduce vacancies even during President Bush's last year in office. With Senate Democrats again in the majority, we reduced judicial vacancies to as low as 34, even though it was a presidential election year. When President Bush left office, we had reduced vacancies in 9 of the 13 Federal circuits.

As matters stand today, judicial vacancies have spiked again, as they did due to Republican obstruction in the 1990s. These vacancies are again being left unfilled. We started 2010 with the highest number of vacancies on article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. While it has been nearly 20 years since we enacted a Federal judgeship bill, judicial vacancies are nearing record levels, with 104 current vacancies and another 22 already announced. If we had proceeded on the judgeship bill recommended by the Judicial Conference to address the growing burden on our Federal judiciary, as we did in 1984 and 1990, in order to provide the resources the courts need, current vacancies would stand over 160 today and would be headed toward 180. That is the true measure of how far behind we have fallen.

Republican Senators insisted on stalling confirmation of the nomination of Judge Gerard Lynch, who was confirmed with more than 90 votes. They insisted on stalling the nomination of Judge Andre Davis, who was confirmed with more than 70 votes. They unsuccessfully filibustered the nomination of Judge David Hamilton last November, having delayed its consideration for months. They stalled Judge Beverly Martin's nomination for at least 2 months because they would not agree to consider it before January 20. They stalled for 3 additional weeks on Judge Greenaway's nomination before he was confirmed unanimously. We have wasted weeks and months having to seek time agreements in order to consider nominations that were reported by the Senate Judiciary Committee unanimously and who are then confirmed overwhelmingly by the Senate once they are finally allowed to be considered.

I, again, urge Senate Republicans to reconsider their strategy and allow prompt consideration of all 14 judicial nominees awaiting Senate consideration, not just Barbara Keenan of Virginia, but also the following nominees: Jane Stranch of Tennessee, nominated to the Sixth Circuit; Judge Thomas Vanaskie of Pennsylvania, nominated to the Third Circuit; Judge Denny Chin of New York, nominated to the Second Circuit; Judge William Conley, nominated to the Western District of Wisconsin; Justice Rogeriee Thompson of Rhode Island, nominated to the First Circuit; Judge James Wynn of North Carolina, nominated to the Fourth Circuit; Judge Albert Diaz of North Carolina, nominated to the Fourth Circuit; Judge Edward Chen, nominated to the Northern District of California; and Justice Louis Butler, nominated to the Western District of Wisconsin; Nancy Freudenthal, nominated to the District of Wyoming; Denzil Marshall, nominated to the Eastern District of Arkansas; Benita Pearson, nominated to the Northern District of Ohio and Timothy Black, nominated to the Southern District of Ohio.

(The remarks of Mr. LEAHY and Mr. SESSIONS are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER (Mr. CASEY). The Senator from Vermont.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

Mr. WEBB. Mr. President, I rise again to speak on behalf of Justice Barbara M. Keenan, the nominee to serve on the Fourth Circuit. I would like to point out this is the third time I have had the pleasure of outlining her qualifications and also would like to express my regret that the Senate is again being forced to waste valuable time that could be used toward solving greater problems in our country in order to go through these repeated delays on votes that are going to be, if not unanimous, certainly well above 90 of our body in favor of this type of nomination.

The American people are commenting about how the Congress is not addressing the true problems of the country. I think this is an example that perhaps all those who are interested in our political system can comprehend rather quickly, of obstructionism and of the unnecessary delay of the appointment of individuals who are vitally needed as we look at the state of our judicial system today.

Justice Keenan was voted out of committee in October of last year by a

unanimous voice vote. Her nomination is noncontroversial. She has been a dedicated public servant, a fair and balanced jurist. Her nomination has broad bipartisan support not only in this body but also in the Commonwealth of Virginia. So I again believe it is critical we move forward as quickly as possible to confirm this nomination.

There are currently four vacancies on the Fourth Circuit—more than any other circuit in our country. This seat that Justice Keenan would fill has been vacant now for more than 2 years. She is an extraordinary choice to fill this vacancy.

She has been a State supreme court justice since 1991. She has been a trailblazer for women in the law throughout her career. At the age of 29, she was the first female general district court judge in Virginia, when she was selected for the Fairfax County bench in 1980. She became the first female circuit court judge when she was promoted to that court in 1982. In 1985, she was 1 of 10 judges named to the first Virginia Court of Appeals and was the only woman on that court when it was first created. She was selected for the State supreme court, the second female justice ever to serve there, in 1991. She was, in fact, the first judge to serve on all four levels of Virginia's courts.

As I pointed out in my previous floor remarks, I think it is very important for the understanding of this body to point out that when Governor McDonnell was recently sworn into office, he specifically requested that Justice Keenan deliver him that oath of office. In fact, Governor McDonnell has released a statement where he said:

Virginia Supreme Court Justice Barbara Keenan is one of the foremost legal minds in our Commonwealth. . . . Her nomination by the President for the United States Court of Appeals for the Fourth Circuit is one that should be viewed favorably and acted upon expeditiously. Justice Keenan has dedicated her career to public service . . . I look forward to her service on the Fourth Circuit bench.

This is from Governor McDonnell, who is from the Republican Party, and I think it is a clear indication of the broad respect this individual has within the Commonwealth.

I am mindful of the Senate's constitutional role in confirming executive nominations. This is vitally important. We have a robust vetting process. Debate is important and appropriate. We have conducted, inside the Virginia delegation, that kind of vetting process which resulted in Justice Keenan's name being moved forward.

Again, in the name of pragmatic bipartisanship and in the spirit of good governance in the way we should be spending valuable time on the Senate floor, with so many issues affecting this country, we need to move past these artificial barriers. We need to stop putting delays in front of the types of issues we should be confronting. Let's get on with the business of governing.

Again, as I pointed out in my previous statement, of the 876 Federal

judgeships, there are currently 100 vacancies. These vacancies delay the administration of justice, they delay the resolution of disputes, and they diminish our citizens' right to a speedy trial. They affect the respect for our whole governmental process.

In light of the fact that my prediction is Justice Keenan will get, if not 100 votes in this body—I doubt she will get 1 or 2 negative votes in this whole body—there is no need for us to go through hours and hours of debate and delay in order to get her where she needs to be; that is, on the Fourth Circuit. So I am asking my colleagues across the aisle if we might not move this nomination forward in a timely way.

With that, I yield the floor.

Mr. CARDIN. Mr. President, I rise today to urge the Senate to invoke cloture on the nomination of Barbara Milano Keenan of Virginia to be a United States circuit judge for the Fourth Circuit.

I had the privilege to chair Justice Keenan's confirmation hearing on October 7 of last year. The Judiciary Committee reported out her nomination by voice vote on October 29 of last year. And here we are today over 4 months later, just now debating the nomination.

I take a special interest in the fourth Circuit, as it includes my home State of Maryland. In May 2008 I chaired the confirmation hearing for Justice Steven Agee, who also served on the Virginia Supreme Court and was confirmed to be a U.S. circuit judge for the Fourth Circuit. In April 2009 I chaired the confirmation hearing for Judge Andre Davis of Maryland, who was overwhelmingly confirmed by the Senate by a 72 to 16 vote in November.

I mention these nominations by way of background for my colleagues, because the Fourth Circuit has one of the highest vacancy rates in the country today. Out of the 15 seats authorized by Congress, 4 are vacant, which means over one-quarter of the court's seats are now vacant. Our circuit courts of appeals are the final word for most of our civil and criminal litigants, as the Supreme Court only accepts a handful of cases. I had hoped that the Senate will move more quickly to nominate and confirm qualified candidates for these seats. I also look forward to increasing the diversity of the judges of the Fourth Circuit.

So I don't understand why the Senate has been moving so slowly on nominations, most of which are not controversial. Of the 15 Federal circuit and district court judges confirmed during President Obama's tenure, 12 have been confirmed unanimously. Republicans have only voted against three of President Obama's nominees to the Federal circuit and district courts. I expect that when Justice Keenan comes to a vote, she will be overwhelmingly confirmed, if not unanimously confirmed. So why is the Senate waiting more

than 4 months to act on her nomination after it has been reported by the Judiciary Committee by a voice vote?

We started 2010 with the highest number of vacancies on article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. Judicial vacancies are nearing record levels, with 102 current vacancies and another 23 already announced.

Justice Keenan comes to the Senate with an impressive amount of experience. She has served on each of the four levels of the Virginia state courts: General District Court, Circuit Court, Court of Appeals, and Supreme Court. She was admitted to the State Bar of Virginia in 1974. She first took the bench at the age of 29, and fittingly has served for a judge for the last 29 years. Before serving as a judge, she worked as an attorney in private practice and as a local prosecutor.

Justice Keenan has presided over an impressive amount of cases. She presided over several thousand cases of to judgment as a judge of the General District Court of Fairfax County, VA, which includes misdemeanors and smaller civil cases. As a circuit court judge, she presided over 600 cases that proceeded to verdict or judgment, and handled a wide range of criminal and civil cases, including both jury trials and bench trials. Finally, Justice Keenan now serves on the Virginia Supreme Court, a position she has held since 1991. I understand that under Virginia law, Supreme Court Justices serve 12 year-terms, and then must seek reappointment by the State general assembly. Justice Keenan was unanimously reappointed by the general assembly.

If confirmed, Justice Keenan would be the first woman from Virginia to serve on the Fourth Circuit.

Justice Keenan earned her B.A. from Cornell University, her J.D. from the George Washington University Law School, and her L.L.M. from the University Of Virginia School Of Law.

She received a unanimous rating of "well qualified" by the American Bar Association's Standing Committee on the Federal Judiciary, which is their highest rating.

So I am pleased to join Senators WEBB and WARNER today on the floor in support of her nomination. I commend the Senators on the process they used to make recommendations to the White House for the Virginia vacancy.

I hope the Senate will invoke cloture on this nomination today, and then take final action to confirm this nomination without any further delay.

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. WARNER. 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. WARNER. Mr. President, I ask unanimous consent that I be allowed to speak for up to 5 minutes, using part of the Republican time.

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

Mr. WARNER. Mr. President, I rise to speak in support of the nomination of Justice Barbara Keenan to serve on the U.S. Court of Appeals for the Fourth Circuit.

In the summer of 2009, my colleague and friend, Senator WEBB, and I had the honor of interviewing a number of potential candidates to serve on the U.S. Court of Appeals for the Fourth Circuit. We were enormously impressed by the quality of all the candidates being considered. But one candidate rose to the top of the list because of her extensive experience, her judicial temperament, and her commitment to the law. That candidate was Justice Barbara Keenan.

President Obama nominated Justice Keenan last September, and in late October the members of the Senate Judiciary Committee reported her nomination by unanimous consent.

Justice Keenan's nomination has been on the Senate Calendar for 4 months now. I believe it is time for this Chamber to consider the nomination and give Justice Keenan an up-or-down vote.

Justice Keenan has served with distinction at every level of State court in Virginia. She has served as a justice on the Virginia Supreme Court since 1991. She also served on the Fairfax County General District Court, the Circuit Court of Fairfax County, and the Court of Appeals of Virginia. Every one of Virginia's bars, including the State bar and the State Bar Judicial Nominations Committee, have all recognized Justice Keenan and recommended her with their highest approval rating—either "highly qualified" or "highly recommended."

I might also mention in passing that Justice Keenan was the first woman appointed to the bench in Virginia and was one of the original 10 appointees to the Virginia Court of Appeals during its creation in 1985. Lest any of my colleagues on either side of the aisle think this falls on the partisan divide that so often I think stymies this body, Justice Keenan not only has the support of Senator WEBB and myself, but she has the support of our new Republican Governor, Governor McDonnell. Justice Keenan actually administered the oath of office to Governor McDonnell just 6 weeks ago.

I am a new Member of this body, and perhaps I sometimes don't always understand the rules and process. However, it does seem strange to me that a justice who is as highly regarded and recommended as Justice Keenan—someone whom the President nominated months and months ago and someone who has received unanimous support in the Senate Judiciary Committee and someone who has the support not only of both Senators from

Virginia but our Republican Governor—has had to wait so long to get a vote.

So I am hopeful the Senate will act on this nomination. I look forward to casting my vote in support of Justice Barbara Keenan's nomination, and I encourage my colleagues on both sides of the aisle to vote for cloture so we can move to that very important vote and fill one more of these vacancies on a very important court in the Fourth Circuit.

Mr. President, I thank you for the time. I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WHITEHOUSE. 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. WHITEHOUSE. Mr. President, I ask unanimous consent that all remaining time be yielded back.

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

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

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, hereby move to bring to a close debate on the nomination of Barbara Milano Keenan, of Virginia, to be a United States Circuit Judge for the Fourth Circuit.

Harry Reid, Herb Kohl, Sheldon Whitehouse, Richard J. Durbin, Benjamin L. Cardin, Patty Murray, Mark Begich, Kirsten E. Gillibrand, Mark R. Warner, Russell D. Feingold, Al Franken, Roland W. Burris, Dianne Feinstein, Patrick J. Leahy, Barbara Boxer, Charles E. Schumer, Edward E. Kaufman.

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 Barbara Milano Keenan, of Virginia, to be a United States Circuit Judge for the Fourth 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. KYL. The following Senator is necessarily absent: the Senator from Texas (Mrs. HUTCHISON).

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 29 Ex.]

YEAS—99

Akaka	Durbin	McConnell
Alexander	Ensign	Menendez
Barrasso	Enzi	Merkley
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murkowski
Begich	Franken	Murray
Bennet	Gillibrand	Nelson (NE)
Bennett	Graham	Nelson (FL)
Bingaman	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagan	Reid
Brown (MA)	Harkin	Risch
Brown (OH)	Hatch	Roberts
Brownback	Inhofe	Rockefeller
Bunning	Inouye	Sanders
Burr	Isakson	Schumer
Burriss	Johanns	Sessions
Byrd	Johnson	Shaheen
Cantwell	Kaufman	Shelby
Cardin	Kerry	Snowe
Carper	Klobuchar	Specter
Casey	Kohl	Stabenow
Chambliss	Kyl	Tester
Coburn	Landrieu	Thune
Cochran	Lautenberg	Udall (CO)
Collins	Leahy	Udall (NM)
Conrad	LeMieux	Vitter
Corker	Levin	Voivovich
Cornyn	Lieberman	Warner
Crapo	Lincoln	Webb
DeMint	Lugar	Whitehouse
Dodd	McCain	Wicker
Dorgan	McCaskill	Wyden

NOT VOTING—1

Hutchison

The PRESIDING OFFICER. On this vote, the yeas are 99, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. CARDIN. Mr. President, I ask unanimous consent that the vote on the confirmation of the nominee occur at 2:15 p.m. and that postcloture time be considered expired at that time; that upon confirmation, the motion to reconsider be considered made and laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session; further, after this unanimous consent request is granted, the Senate then stand in recess until 2:15 p.m.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:42 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

EXECUTIVE SESSION

NOMINATION OF BARBARA MILANO KEENAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT—Continued

Mr. DODD. Mr. President, I ask for the yeas and nays on the pending nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Under the previous order, the question is, Will the Senate advise and

sent to the nomination of Barbara Milano Keenan of Virginia to be United States Circuit Judge for the Fourth Circuit.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that each side be allowed 1 minute before the vote.

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

Mr. LEAHY. Mr. President, as with so many other nominations before the Senate, Justice Keenan has waited an extraordinary amount of time to be confirmed. Her nomination was reported without dissent by the Judiciary Committee more than 4 months ago. The unprecedented pattern of delay and obstruction by Senate Republicans on issue after issue—over 100 filibusters last year—has affected 70 percent of all Senate action. We have to file cloture just to bring up a non-controversial matter.

In addition to the Keenan nomination, 10 judicial nominations that received bipartisan support are being delayed. The Senate can almost double the total number of judicial nominations confirmed by stopping the filibusters—by not requiring that and vote up or down.

Americans elect us to vote yes or no, not to vote maybe, and when you have a filibuster, you vote maybe. We ought to have the guts to vote yes or vote no.

The nomination of Justice Barbara Keenan of Virginia to the Fourth Circuit is noncontroversial. She should have been confirmed long ago. She has the support of her home State Senators and that of Virginians from both parties, and many others. She was approved unanimously by the Senate Judiciary Committee over four months ago. As I predicted, and as the Senators from Virginia predicted, the Senate unanimously voted to end the filibuster of this nomination, 99-0. No member of the Senate has spoken in opposition to her nomination. There is no reason she should not be confirmed unanimously.

Despite the overwhelming support for Justice Keenan, the Senate's consideration of her nomination was filibustered by Senate Republicans. Just as one Senator has objected to passing unemployment insurance and COBRA benefits and Medicare payments for doctors and extending the Satellite Home Viewer Act, Republicans refused to agree to debate and vote on the nomination of Justice Keenan. In fact, they have refused to consider any judicial nominations for the last three weeks. Delay and obstruction, obstruction and delay. Even for nominations that will be confirmed unanimously.

The Senate is far behind where we should be in helping to fill judicial vacancies. Vacancies have skyrocketed to more than 100, and more have been announced. We need to do better. The American people deserve better.

Instead of time agreements and the will of the majority, the Senate is faced with requiring cloture petitions

and 60 votes to overcome a filibuster on issue after issue. In addition to the Keenan nomination, 10 judicial nominations that received strong bipartisan support in the Judiciary Committee—including seven that were reported without dissent—should be considered without delay. Debate should be scheduled, and votes taken on each of 14 judicial nominees stalled who have already been considered and favorably reported by the Judiciary Committee. Only 15 Federal circuit and district court judges have been considered by the Senate during President Obama's 13 months in office. By this date during President Bush's first term, the Senate had confirmed 39 judicial nominees. The Senate can almost double the total number of judicial nominations it has confirmed by considering the other judicial nominees already before the Senate awaiting final action. We should do that now, without more delay, without additional obstruction.

In December, I made several statements in this chamber about the need for progress on the nominees reported by the Senate Judiciary Committee. I also spoke repeatedly to Senate leaders on both sides of the aisle and made the following proposal: Agree to immediate votes on those judicial nominees that are reported by the Senate Judiciary Committee without dissent, and agree to time agreements to debate and vote on the others. I, again, urge Senate Republicans to reconsider their strategy of obstruction and allow prompt consideration of all 14 judicial nominees currently awaiting final Senate consideration. There is no need for these to be dragged out week after week, month after month, with only a single nominee being considered every several weeks. End the blockage of this President's nominees and vote on them.

I congratulate Justice Keenan on her confirmation today. I look forward to the time when the 13 additional judicial nominees being stalled are released from the holds and objections that are preventing votes on their confirmations.

The PRESIDING OFFICER. Who yields time in opposition?

The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, after all we have done to work with the distinguished chairman of the Judiciary Committee, he still complains. I am amazed.

This nominee seems to be a solid nominee. The President has due deference on nominees, and I think she should be confirmed and I will support her. But President Bush's nominees, for example, to the circuit courts, waited an average of 350 days from nomination to confirmation. And that was just the average. President Obama's circuit nominees have been confirmed, on average, 100 days faster.

Indeed, some of President Bush's nominees to the circuit courts even received a hearing, despite being highly qualified and highly rated nominees.