

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 have recently reiterated my proposal and urged Senate Republicans to reconsider their strategy of obstruction. There is no justification for these nominations to be dragged out week after week, month after month.

The last time the Senate considered judicial nominations was weeks ago. Indeed, on March 2, the Republican filibuster and obstruction of the nomination of Justice Barbara Keenan of Virginia to be a Fourth Circuit Judge had to be ended by invoking cloture. Senate Republicans would not agree to debate and vote on her nomination and the majority leader was required to proceed through a time consuming procedure to end the obstruction. The votes to end debate and on her confirmation were both 99 to 0. That nomination had been reported in October. So after more than 4 months of stalling, there was no justification, explanation or basis for the delay. That is wrong. That was the 17th filibuster of President Obama's nominations.

The 18 judicial nominees awaiting Senate consideration are: 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; 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; 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; Timothy Black, nominated to the Southern District of Ohio; Gloria M. Navarro, nominated to the District of Nevada; Audrey G. Fleissig, nominated to the Eastern District of Missouri; Lucy H. Koh, nominated to the Northern District of California; Jon E. DeGuilio, nominated to the Northern District of Indiana; Tanya Walton Pratt, nominated to the Southern District of Indiana; and Jane Magnus-Stinson, nominated to the Southern District of Indiana. Twelve of the 18 were reported from the Senate Judiciary Committee without opposition; one had a single negative vote. The stalling and obstruction should end and these nominations should be considered by the Senate and voted upon without further delay. When they are, they, too, will be confirmed overwhelmingly.

I also want to highlight my concern about the new standard the Republican

minority is applying to many of President Obama's district court nominees. Democrats never used this standard with President Bush's nominees, whether we were in the majority or the minority. In 8 years, the Judiciary Committee reported only a single Bush district court nomination by a party-line vote. That was the controversial nomination of Leon Holmes, who was opposed not because of some litmus test, but because of his strident, intemperate, and insensitive public statements over the years. During President Obama's short time in office, not one, not two, but three district court nominees have been reported on a party-line vote as Senate Republicans look for any reason to oppose every nomination. I hope this new standard does not become the rule for Senate Republicans.

Of the 17 Federal circuit and district court judges confirmed, 14 have been confirmed unanimously. That is right. The delay and obstruction is so baseless that when votes are finally taken, they are overwhelmingly in favor and most often unanimous. There have been only a handful of votes cast against just three 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. Judge David Hamilton was filibustered in a failed effort to prevent an up or down vote.

So why all the obstruction and delay? It is part of a partisan pattern. Even when they cannot say "no," Republicans nonetheless demand that the Senate go slow. The practice is continuing. There have already been 17 filibusters of President Obama's nominees. That is the same number of Federal circuit and district nominees the Senate has confirmed during the entirety of the Obama administration. And that comparison does not include the many other nominees who were delayed or who are being denied up-or-down votes by Senate Republicans refusing to agree to time agreements to consider even noncontroversial nominees.

I urge Senate Republicans to reconsider their destructive strategy and to work with us to provide final consideration without further delay to the 18 judicial nominees on the Senate Executive Calendar awaiting final action. We can make real progress if they will join with us and we work together.

The PRESIDING OFFICER. The Senator from Virginia.

#### EXTENSION OF MORNING BUSINESS

Mr. WARNER. I thank my colleague from Colorado. I ask unanimous consent that 7 minutes of morning business be added to each side and at the end of that time, the Senate stand in

recess as provided for under the previous order. I thank my colleagues on the other side for their courtesy.

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

The Senator from Alaska.

Mr. President, I am pleased to join my colleagues on the floor today to discuss what none of us are the least bit happy to see happening in the U.S. Senate.

We were sent here by the people of our States to get work done. This means passing legislation and overseeing the work of Federal agencies.

It is difficult, if not impossible, for Federal agencies to do the work Congress and the American people want them to do if they spend months—in some cases, years—leaderless. It is impossible for them to do their work if they can hope that a momentary peace will break out in the Senate to allow for confirmation of the presidential designee for their respective agency.

As Senators, we are endowed with a constitutional responsibility to lend our advice and consent to the men and women a President nominates to run agencies and parts of agencies.

Career civil servants can do a lot. We would be lost without them. But they do not have the authority, or the accountability to Congress and the American people to accomplish what a President selects them to do.

Yet many of our colleagues on the other side of the aisle would deny President Obama any of his nominees. I believe a President—the current President or any future President with whom I am lucky enough to serve—is due a great deal of deference in his or her selections for Senate-confirmable positions.

For our Republican colleagues, it would seem there is a belief that the Federal Government should just not function, certainly any government led by President Obama.

We have seen the slow-walking, the indefinite—and indefensible—holds on nominations for crucial national security positions. Only when Armed Services Chairman LEVIN took the unusual step of embarrassing colleagues who were placing a hold for their home State politics did a number of important nominees get reported out of our committee.

There is still a hold by one of our Republican colleagues—unbelievable as it may seem—on the promotion of an Army general while our Nation is involved in two wars.

But the problem and the cynicism of Republican obstructionism is seen nowhere as obviously as in the judiciary. There are currently 103 Federal judge vacancies.

Several nominees reported out of the Judiciary Committee have been denied votes in the Senate by Republican obstructionism for almost 200 days. In some cases the judicial seat to be filled has been vacant for years.

It is clear that—even if they are in denial about who was elected in 2008—

our Republican colleagues have their sights set on 2012 and beyond, when they hope to have a huge number of Federal court vacancies to be filled by a President more to their liking.

Obstruction of nominees hurts the functioning of the government our colleagues have strived to be part of. If they continue to block qualified nominees, our Republican colleagues only further demonstrate their unwillingness to perform the duties for which they were elected and prove their disdain for the constitutional responsibilities with which they have been entrusted.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, let me thank Senator WARNER for organizing this presentation to point out the abuses the minority has used in blocking the responsibility of the Senate to confirm appointments made by the President. I believe in the right of the minority. At times, it needs to be exercised. But it has been abused. The American people need to know that because it is affecting their rights and the ability of agencies and the courts to protect the rights of Americans.

Let me cite one number: 60 individuals the President has nominated for important offices have been blocked in their confirmation votes on the Senate floor even though their nominations were approved by the committees either by voice vote or unanimous vote or by significant supermajorities. These are just being delayed, when we now know the final outcome will be approval. As a result, Americans are being denied judges on the courts and administrators who can help enforce their rights.

We have already heard the circumstances about our courts, how we have had to take to a cloture vote, which means floor time, for the nomination of Judge Keenan, who received 99 votes and no one in opposition. We have two vacancies on the Fourth Circuit right now. These appointments have been approved overwhelmingly by the Judiciary Committee—Albert Diaz and James Wynn—by votes of 19 to 0 and 18 to 1. They have the support of Senators BURR and HAGAN. Yet they have still not been brought to the floor for a vote. That represents a 20-percent vacancy on the Fourth Circuit, denying the people of my region their full representation on the appellate court.

We are very proud of legislation we have passed to help the disabled—the ADA law—to guarantee gender pay equity with the Lilly Ledbetter law, and genetic discrimination prohibition legislation. But it takes the EEOC to enforce those rules. President Obama has submitted four nominees for the EEOC. They have been approved by the committee by voice votes, which means they are not controversial. Yet we cannot bring those nominations to the floor for quick action because Republicans are abusing their rights to hold

up action on the floor of the Senate to carry out our constitutional responsibilities to act on the President's nominations.

This is denying the people of America the protections they are entitled to by the courts and by agencies. It is wrong. It is time for this practice to end.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Arizona.

Mr. KYL. I ask unanimous consent to speak for 15 minutes.

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

#### HIRE ACT

Mr. KYL. Mr. President, we are going to be taking up the so-called HIRE Act starting tomorrow. I wish to address some of the problems with it since the procedure under which we have considered this bill does not allow any amendments. As a result, we have no opportunity to fix problems that are inherent with the bill and will force me to vote against it.

The first provision that should be highlighted is the provision called the Build America Bonds. This was created first in the 2009 stimulus bill. It offers a direct subsidy from the Federal Government to States and other governmental entities to cover their cost of financing for certain kinds of projects.

The House-passed bill expands this subsidy by allowing four current tax-preferred bonds to qualify for the direct subsidy under this program and increases the generosity of that subsidy to cover all of the borrowing costs for education projects. This will mean an expansion of the already substantial support the Federal Government offers for State and local governments, support for which we taxpayers are then responsible. The Federal Government gave \$44 billion in extraordinary stimulus State aid last year and regularly spends \$26 billion annually in sub-Federal Government subsidies through tax-exempt bond financing. This is a significant Federal expenditure for which taxpayers will be responsible.

Here is the key problem, in addition to the additional exposure of taxpayers: Because interest rates reflect risks, States with poor credit ratings that therefore pay higher interest rates would actually be rewarded under this legislation due to the structure of these bonds. For example, a State that issues \$1 billion worth of debt paying a 5-percent interest rate would receive a bigger direct payment from the Federal Government than a State issuing \$1 billion worth of debt paying a 4-percent interest rate. Thus, States with lower credit ratings could receive larger subsidies, which, of course, encourages greater risk-taking and creates an incentive for States to issue even more debt than they would have without the subsidy.

The so-called jobs bill would further reward States with poor credit. The Senate version of the bill expands the

Build America Bonds program by giving insurers of certain tax credit bonds for school construction and alternative energy projects the option of receiving direct payment of up to 65 percent of the interest cost. The House bill would, in certain cases, reimburse up to 100 percent of a project's interest costs.

The original Build America Bonds program encouraged States to take greater risks. The bill we will consider tomorrow would make the problem even worse. One of the lessons from the financial crisis is that people should not borrow more than they can afford. Unfortunately, it appears many of us have not taken this lesson to heart.

There is a provision relating to highway extension. Rather than being a straight extension of the current highway authorization, this bill represents a significant expansion of the Federal Government's funding for highway projects. The highway piece first cancels rescissions that were scheduled under the last highway reauthorization. It then permanently increases the authorization levels for highway spending and permanently authorizes interest payments from the general fund to the highway trust fund and authorizes a one-time transfer of \$19.5 billion from the general fund to the highway trust fund.

Although not all of these costs will show up as increasing the deficit because of the unique CBO scoring conventions, all told, the highway extension under this bill will add \$46.5 billion to the debt over the next 10 years and will authorize \$142.5 billion in additional spending over the next 10 years.

You hear the President talking about not adding to the deficit. All of our colleagues wring their hands and say: We have to somehow control Federal spending. Yet in this legislation we take up tomorrow we add \$46.5 billion to the debt over the next 10 years and then authorize an additional \$142.5 billion of spending over the next 10 years. When will it stop?

There is a provision of the bill that has some merit to it. It is called the payroll tax holiday, although I think the way it has been constructed is not something we should do. This is the most expensive piece of the bill. In fact, the Congressional Budget Office has told us that it expects a provision similar to this to create five to nine jobs for each million dollars in budgetary cost in 2010. Since this provision would cost approximately \$13 billion by using the CBO model, one would estimate that the provision would create between 65,000 and 117,000 jobs this year at a cost of \$110,000 to \$200,000 per job. This sounds a lot like the stimulus bill to me, a very inefficient way to create jobs, if, in fact, they actually get created.

The proposed payroll tax holiday comes on the heels of the Senate-passed health care bill which actually increases the Medicare payroll tax from 2.9 percent to 3.8 percent. This actually would relieve employers of an