minor sex trafficking cases prosecuted by the state. All of these expenses can and should be provided by the states, not the federal government.

I agree the problem of sex trafficking, particularly when the victims are children, is an important issue both state and federal governments should address. As ranking member of the Human Rights and the Law Subcommittee, I have seen the effects of the sex trade industry both internationally and domestically. As it pertains to domestic child sex trafficking victims, however, I believe the federal government should not be the primary provider of services for these victims.

Most cases involving child sex trafficking are prosecuted at the state level, while the federal government typically only joins cases involving large sex trafficking rings that often include other federal criminal activity. As a result, I have concerns that this legislation places too great of a burden on the federal government to provide funding for trafficking victims' services. In addition, the bill allows grant funds to be used in many ways beyond basic services that I believe both detract from the goal of assisting victims and duplicates funding already provided by other federal grant programs.

Third, only 50% of the grant funds are required to go toward actual victims' services. The other 50% can be used for salaries for state law enforcement officers and prosecutors, as well as state trial and investigation expenses. While I do not support the federal funding of food, clothing and other daily necessities for these victims, by refusing to require a higher percentage of the grant to go toward these types of direct victims' services, the bill does not fulfill its goal.

Finally, while I was encouraged by some of the compromise language that was included in the bill the Judiciary Committee ultimately passed, such as inserting the bill's grant program into an existing federal program to avoid some of the overlap and direct duplication it initially created, there remain several broad Justice Department grant programs that can be used for the purposes outlined in this bill's grant program. All of the Edward Byrne Grant programs, including the Discretionary Grants or earmarks, the Community Oriented Policing Service (COPS) grants and multiple juvenile justice grants offered through the Office of Juvenile Justice and Delinquency Prevention (OJJDP) contain broad language that would allow these grants to be used for the purposes outlined in S. 2925.

While there is no question that the sex trafficking industry has lifelong, horrific effects on its victims, particularly minors, both federal and state governments bear the burden of addressing this issue. It is the states who should provide funding for the permissible purposes under this bill's grant program, as it is state and local agencies which have the responsibility to carry out these services. Furthermore, the federal government already provides funding to address trafficking issues, and grant programs are available to state and local governments that can be used to help sex trafficking victims. Congress should, like many American individuals and companies do with their own resources, evaluate current programs, determine any needs that may exist and prioritize those needs for funding by cutting from the federal budget programs fraught with waste, fraud, abuse and duplication.

Sincerely,

TOM A. COBURN, M.D.,
U.S. Senator.

NATIONAL CYBER INFRASTRUCTURE PROTECTION ACT

Mr. BOND. Mr. President, last June, Senator HATCH and I introduced S. 3538, the National Cyber Infrastructure Protection Act. This bill responds to the concern expressed by former Director of National Intelligence Mike McConnell that ''[i]f we were in a cyber war today, the United States would lose.''

The bill is built on three principles. First, we must be clear about where Congress should, and, more importantly, should not legislate. Second, there must be one person in charge—someone outside the Executive Office of the President who is unlikely to claim executive privilege, but who has real authority to coordinate our government cyber security efforts. Third, we need a voluntary public-private partnership to facilitate sharing cyber threat information, research, and technical support.

Since filing the bill, we have continued to work with government, industry, and privacy experts in making sure that the solutions identified in this bill are effective. There are many different opinions out there on how best to tackle the cyber security problems we face, and so we remain open to looking at ideas for improving the bill. Earlier today, we filed a substitute amendment to S. 3538 that incorporates a number of these suggested improvements. It has been referred to committee.

The original bill would have housed the National Cyber Center administratively in the Department of Defense so as to reduce start-up costs and logistics. We appreciate the concerns some may have with the appearance we are militarizing cyber security, so our substitute creates the center as a standalone entity, like the Office of the Director of National Intelligence. In this way, it will be clear we are not militarizing cyber security and one department does not have the inside track over any other when it comes to securing our government networks. In order to make sure there is appropriate input from DOD and DHS, we are also creating two deputy directors, instead of one, with each appointed by the respective Secretaries with the concurrence of the Director of the National Cyber Center.

Second, the Cyber Defense Alliance is a pivotal component for encouraging government and the private sector to collaborate and share information on cyber-related matters. We recognize that the private sector is often on the front lines of cyber attacks, so any information they can provide to increase government awareness of the source and nature of cyber threats will make both government and the private sector stronger. The corollary to this is that the government must share its own cyber threat information, including classified or declassified intelligence, with the private sector.

All of this sharing can raise significant privacy concerns. So, in response to suggestions we have heard, our substitute bill adds language to clarify that at least one of the private sector members of the board of directors must have experience in civil liberties matters. We believe this will ensure that privacy concerns are taken seriously at the very top levels of the Alliance. We all have an interest in making sure that threat information is shared, but we also have an interest in making sure that no one's privacy rights are violated.

The next Congress needs to focus on passing effective cyber legislation. I believe that S. 3538, as amended, provides a solid starting point for that effort. The bill addresses the most pressing needs: it puts someone outside the White House in charge of cyber policy and the Federal cyber budget; it provides a national cyber center that can oversee and coordinate cybersecurity for dot.gov and dot.mil; and it creates a public-private partnership that will harness the creativity of the private sector to better protect our dot.com networks.

Congress should avoid the temptation to overlegislate in this area. We need to walk before we can run. Once this basic cyber infrastructure is established, it will bring the leading public and private cyber experts together to shape cyber activities and policies. These experts will then be in an ideal position to advise Congress and the administration on the need for any additional steps to ensure our cybersecurity.

I thank my good friend Senator HATCH for his close collaboration on this legislation. I know he will be an effective advocate for this approach when the bill is filed in the next Congress.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, recently I spoke to the Senate on the occasion of the consideration of the nomination of Jane Branstetter Stranch of Tennessee to the Sixth Circuit. It was nearly 10 months after her nomination was favorably reported by the Senate Judiciary Committee that Senate Republicans finally consented to a time agreement and vote, despite the support of the senior Senator from Tennessee, a member of the Republican leadership. Nevertheless, I said then that if consideration of the Stranch nomination, after months of needless delay, represented a bipartisan willingness to return to the Senate's tradition of offering advice and consent without extensive delays, I welcomed it. I urged the Senate to consider the other 16 judicial nominations then on the Senate Executive Calendar favorably reported by the Judiciary Committee without further delay.

Regrettably, since Judge Stranch was approved by a bipartisan majority on September 13, the Senate has not considered a single additional judicial nomination, although some were reported as long ago as January. Indeed,

during the rest of this work period the list of judicial nominations stalled on the calendar has grown to 23, including 16 that were reported by the committee unanimously. Meanwhile judicial vacancies around the country continue to rise and now number 104. These include 48 vacancies that the Judicial Conference has designated as judicial emergencies.

The Senate is well behind the pace set by a Democratic majority in the Senate considering President Bush's nominations during his first 2 years in office. Republicans have allowed the Senate to consider and confirm only 41 of President Obama's circuit and district court nominations over the last 2 years. In stark contrast, by this date in President Bush's second year in office, the Senate with a Democratic majority had confirmed 78 of his Federal circuit and district court nominations. That number reached 100 by the end of 2002, all considered and confirmed during the 17 months I chaired the Senate Judiciary Committee.

During those 17 months, I scheduled 26 hearings for the judicial nominees of a Republican President and the Judiciary Committee worked diligently to consider them. During the 2 years of the Obama administration, I have tried to maintain that same approach, and the committee has held 25 hearings for President Obama's Federal circuit and district court nominees. I have not altered my approach and neither have the Senate Democrats.

One thing that has changed is that we have been able to hold hearings for nominees more regularly because we now receive the paperwork on the nominations, the nominee's completed questionnaire, the confidential background investigation and the America Bar Association, ABA, peer review almost immediately after a nomination is made, allowing us to proceed. During 2001 and 2002, President Bush abandoned the procedure that President Eisenhower had adopted and that had been used by President George H.W. Bush, President Reagan and all Presidents for more than 50 years. Instead, President George W. Bush delayed the start of the ABA peer review process until after the nomination was sent to the Senate. That added weeks and months to the timeline in which hearings were able to be scheduled on nominations.

When I became chairman of the Judiciary Committee midway through President Bush's first tumultuous year in office, I worked very hard to make sure Senate Democrats did not perpetuate the ''judge wars'' as tit-for-tat. Despite that fact that Senate Republicans pocket filibustered more than 60 of President Clinton's judicial nominations and refused to proceed on them while judicial vacancies skyrocketed during the Clinton administration to more than 110, in 2001 and 2002, during the 17 months I chaired the committee during President Bush's first 2 years in office, the Senate proceeded to confirm 100 of his judicial nominees.

By refusing to proceed on President Clinton's nominations while judicial vacancies skyrocketed during the 6 years they controlled the pace of nominations, Senate Republicans allowed vacancies to rise to more than 110 by the end of the Clinton administration. As a result of their strategy, Federal circuit court vacancies doubled. When Democrats regained the Senate majority halfway into President Bush's first year in office, we turned away from these bad practices. As a result, overall judicial vacancies were reduced during the Bush years from more than 10 percent to less than four percent. During the Bush years, the Federal court vacancies were reduced from 110 to 34 and Federal circuit court vacancies were reduced from a high of 32 down to single digits.

This progress has not continued with a Democratic President back in office. Instead, Senate Republicans have returned to the strategy they used during the Clinton administration of blocking the nominations of a Democratic President, again leading to skyrocketing vacancies. Last year the Senate confirmed only 12 Federal circuit and district court judges, the lowest total in 50 years. This year we have yet to confirm 30 Federal circuit and district judges. We are not even keeping up with retirements and attrition. As a result, judicial vacancies are, again, over 100 and, again, more than 10 percent.

This trend should alarm the American people who expect justice from the Federal courts. I will ask consent to have printed in the RECORD at the conclusion of my statement a recent column by Attorney General Eric Holder about the cost to the American system of justice. He writes:

> The federal judicial system that has been a rightful source of pride for the United States—the system on which we all depend for a prompt and fair hearing of our cases when we need to call on the law—is stressed to the breaking point.
>
> Last year, 259,000 civil cases and 75,000 criminal cases were filed in the federal courts, enough to tax the abilities of the judiciary even when it is fully staffed. But today there are 103 judicial vacancies—nearly one in eight seats on the bench. Men and women who need their day in court must stand in longer and longer lines.

I will also ask consent to have printed in the RECORD at the conclusion of my statement a recent article that appeared on Slate by Dahlia Lithwick and Professor Carl Tobias, pointing out that thousands of hard-working Americans seeking justice in our courts bear the cost of justice delayed and denied as a result of vacant courtrooms and overburdened judges. Many senior and retired judges continue to try to carry the workload, but we fall farther behind. They write:

> It stands to reason that if you can't get into a courtroom, if the docket is too packed for your case to be heard promptly, or if the judge lacks sufficient time to address the issues raised, justice suffers. This will directly affect thousands of ordinary Americans plaintiffs and defendants whose liberty, safety, or job may be at stake and for whom justice may arrive too late, if at all. In some jurisdictions, civil litigants may well wait two to three years before going to trial. In jurisdictions with the most vacancies, it will often take far longer for published opinions to be issued, or courts will come to rely on more unpublished opinions. More worrisome still, because the Speedy Trial Act requires that courts give precedence to criminal cases, some backlogged courts have had to stop hearing civil cases altogether.

Earlier this month, I spoke to the Senate about the serious warning issued by Justice Anthony Kennedy at the Ninth Circuit Conference about skyrocketing judicial vacancies in California and throughout the country. He said, ''It's important for the public to understand that the excellence of the federal judiciary is at risk.'' He noted that ''if judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled.'' A recent editorial in the Los Angeles Times focuses on the acute problems in the Ninth Circuit and urges the Senate to act on three nominations to fill vacancies in Federal courts in California.

President Obama has not made nominations opposed by home State Senators but has, instead, reached out and worked with home State Senators from both parties. Likewise, I have respected the minority. We have tried to develop and improve the cooperation between parties and branches. It is disappointing to see others take the opposite approach. We could help to address this vacancies crisis just by acting on the judicial nominations ready for action but which remain stalled on the Executive Calendar.

I have worked closely with the ranking Republicans on the Judiciary Committee while serving as its chairman. I have enjoyed my relationship with the current Ranking Republican, and I have often thanked Senator SESSIONS for his cooperation in working with me to hold hearings and consider nominations in committee. I was disappointed by his statement to the Senate last week, however. He is entitled to his own perspective on these matters, of course. I feel very strongly that Democrats in the Senate treated President Bush's judicial nominations better and more fairly than Republicans had those of President Clinton, and certainly better than President Obama's nominees are currently being treated. The comparison of vacancy rates and the number of judges confirmed in President Bush's first 2 years with a Democratic majority—100, including 17 circuit court nominations—bear that out. I also believe that there was a clear difference in the smaller number of judicial nominees opposed by Democratic Senators and the open manner in which Democrats made clear the basis of their opposition in contrast to the secret holds and across the board nature of the Republican opposition. Another indisputable fact is the judicial vacancy crisis during the Clinton administration that has been recreated since President Obama was elected. By contrast, during the Bush administration

Senate Democrats worked to reduce vacancies and the result was that we did so dramatically.

Indeed, much of Senator SESSIONS' statement last Wednesday reads like an attempted justification for some sort of payback. He does concede that we proceeded promptly to confirm President Bush's district court nominations, but unfortunately attributes a sinister cast even to those actions. Sometimes the statement does not merely attribute the wrong motive or mischaracterize what happened, but is a misstatement of the facts. For example, the Senator suggested that the Senate confirmed only 6 of President Bush's 25 circuit court nominees. In fact, we worked hard to confirm 17 circuit court nominees in the 17 months that I chaired the committee during 2001 and 2002.

By contrast, only 11 of President Obama's circuit court nominees have been confirmed these 2 years—this, despite the fact that 17 have, so far, been reported by the Judiciary Committee. Five of the six circuit court nominations stalled and still being prevented from being considered were reported unanimously, one as long ago as January. This is another good illustration of the difference in how Republican and Democratic Senators have treated judicial nominations by the President of the other party.

Democratic Senators did not stall such consensus nominations for spite or payback. And when we opposed nominations we said why. Unlike President Bush, President Obama has not made a series of judicial nominees designed to pack the courts with ideologues. Instead, he has worked with home State Senators and selected highly qualified, predominately moderate nominees.

Nor have we sought to force through nominations by ignoring the rules and traditions of the Senate or the committee, as Republicans did. Those practices are detailed in my contemporaneous statements at the time but ignored in the statement made last Wednesday. For example, when I became chairman in 2001, I made home State Senators' ''blue slips'' public for the first time, preventing Senators from anonymously blocking committee action on judicial nominees. That was a bad practice that led to the pocket filibusters of more than 60 of President Clinton's judicial nominees. Also ignored in last Wednesday's statement was the history of earlier filibusters, such as that of the Supreme Court nomination of Abe Fortas to be the Chief Justice and of President Clinton's nominations to the Ninth Circuit.

The statement was in many regards ahistorical or anti-historical. In complaining about a handful of Fourth Circuit nominees in the last 2 years of President Bush's administration, the statement ignored the fact that we had broken the logjam caused by 8 years of Republican obstruction of President Clinton's nominations to that circuit and that the examples cited were after vacancies had been reduced and in light of opposition from home State Senators to some of the nominees. Indeed, we might have made even more progress had President Bush not proceeded for years to make several extreme nominations. The statement also seems unaware of the work we did to resolve the impasse in the Sixth Circuit, resulting in every single vacancy in the circuit being filled by President Bush.

Regrettably, the Senate this year is not being allowed to consider the consensus, mainstream judicial nominees favorably reported from the Judiciary Committee. It has taken nearly five times as long to consider President Obama's judicial nominations as it did to consider President Bush's during his first 2 years in office. During the first 2 years of the Bush administration, the 100 judges confirmed were considered by the Senate an average of 25 days from being reported by the Judiciary Committee. The average time for confirmed circuit court nominees was 26 days. By contrast, the average time for the 41 Federal circuit and district and circuit court judges confirmed since President Obama took office is 90 days and the average time for circuit nominees is 148 days—and that disparity is increasing.

Senate Republicans have refused to allow prompt consideration even to those consensus nominations that are reported unanimously and without opposition by the Judiciary Committee. There is no good reason to hold up consideration for weeks and months of nominees reported without opposition from the Judiciary Committee. I have been urging since last year that these consensus nominees be considered promptly and confirmed.

In 2001 and 2002, the first 2 years of the Bush administration, the Senate with a Democratic majority confirmed 100 judicial nominees. We obviously will not reach that level or reduce judicial vacancies as effectively as we did in those 2 years. What we can do is consider the 23 judicial nominations already on the calendar. That could bring us to 64 Federal circuit and district court confirmations. If we also completed action on the 11 additional judicial nominees who participated in September hearings, that could bring us to a respectable total of 75 circuit and district court confirmations. That would be in the range of judicial confirmations during President Reagan's first 2 years (88) and President George H.W. Bush's, 72, but pale in comparison to the 100 confirmed in the first 2 years of the George W. Bush administration or those confirmed during President Clinton's first 2 years, 126.

Mr. President, I ask unanimous consent to have printed in the RECORD those materials to which I referred.

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

[From The Washington Post, Sep. 28, 2010]

NOW VACANT: A CONFIRMATION CRISIS IN OUR COURTS

(By Eric H. Holder, Jr.)

More than a year ago, President Obama nominated Jane Stranch, a respected Nashville labor lawyer, to a seat on the U.S. Court of Appeals for the 6th Circuit. That vacancy had been declared a ''judicial emergency'' because the Sixth Circuit does not have enough judges to promptly or effectively handle the court's caseload, leading to serious delays in the administration of justice to people in Tennessee and other parts of the 6th Circuit. Yet despite the fact that Judge Stranch enjoyed the support of both of her Republican home-state senators and bipartisan support in the Senate Judiciary Committee, she was forced to wait almost 300 days for an up-or-down vote by the full Senate. When she finally received that vote earlier this month, she was confirmed overwhelmingly.

Unfortunately, her story is all too typical. Nominee after nominee has languished in the Senate for many months, only to be confirmed by wide bipartisan margins when they finally do receive a vote. As Congress finishes its last week in session before the November elections, our judicial system desperately needs the Senate to act.

Today, 23 judicial nominees—honest and qualified men and women eager to serve the cause of justice—are enduring long delays while awaiting up-or-down votes, even though 16 of them received unanimous bipartisan approval in the Judiciary Committee. The confirmation process is so twisted in knots that we are losing ground—there are more vacancies today than when President Obama took office. The men and women whose confirmations have been delayed have received high marks from the nonpartisan American Bar Association, have the support of their home-state senators (including Republicans), and have received little or no opposition in committee. These outstanding lawyers and jurists deserve better, as do litigants who bring cases to increasingly understaffed courts.

In the Eastern District of California, in Sacramento, there are 1,097 cases filed per judge annually. Six months ago, the president nominated California Judge Kimberly Mueller to help relieve that workload. Judge Mueller is a distinguished jurist with seven years' experience as a magistrate judge, a unanimous rating of well qualified from the American Bar Association and the unanimous backing of the Senate Judiciary Committee. Yet she has still not been confirmed.

For the 4th Circuit, the president nominated Albert Diaz, an experienced state court judge and former Marine and officer in the Navy's Judge Advocate General Corps, to a seat on the U.S. Court of Appeals that has been vacant for more than three years. He was approved unanimously by the Senate Judiciary Committee in January and is strongly backed by both of North Carolina's senators. Yet Judge Diaz has waited 242 days for a vote by the full Senate.

In the rotunda outside my Justice Department office, it is inscribed that ''The United States wins its point whenever justice is done its citizens in the courts.'' As attorney general, I have the privilege of leading a strong department in which public servants seek justice every day. But the quotation that has greeted attorneys general for the past 70 years serves as a reminder that justice depends on effective courts. The federal judicial system that has been a rightful source of pride for the United States—the system on which we all depend for a prompt and fair hearing of our cases when we need to call on the law—is stressed to the breaking point.

Last year, 259,000 civil cases and 75,000 criminal cases were filed in the federal courts, enough to tax the abilities of the judiciary even when it is fully staffed. But today there are 103 judicial vacancies—nearly one in eight seats on the bench. Men and women who need their day in court must stand in longer and longer lines.

The problem is about to get worse. Because of projected retirements and other demographic changes, the number of annual new vacancies in the next decade will be 33 percent greater than in the past three decades. If the historic pace of Senate confirmations continues, one third of the federal judiciary will be vacant by 2020. If we stay on the pace that the Senate has set in the past two years—the slowest pace of confirmations in history—fully half the federal judiciary will be vacant by 2020.

As Justice Anthony Kennedy recently noted, the ''rule of law is imperiled'' if these important judicial vacancies remain unfilled. In 2005, Senate Republican leader Mitch McConnell called on Congress to return to the way the Senate operated for over 200 years, and give nominees who have majority support in the Senate an up-or-down floor vote.

I agree. It's time to address the crisis in our courts. It's time to confirm these judges.

[From Slate.com, Sep. 27, 2010]

VACANT STARES—WHY DON'T AMERICANS WORRY ABOUT HOW AN UNDERSTAFFED FEDERAL BENCH IS HAZARDOUS TO THEIR HEALTH?

(By Dahlia Lithwick and Carl Tobias)

The prospect of a federal bench with nearly one out of every eight judicial seats vacant should scare the pants off every American. Yet few Americans are as worked up about it as those of us who think and worry about it a lot. Our argument was already a tough sell before the threat of global terrorism and a collapsed economy ate up every moment of the national political conversation. Now a 10 percent judicial vacancy rate seems like a Code Beige emergency in a Code Red world.

Part of the problem is politics: It has often seemed that the only people screaming for speedy judicial confirmations are panicked because it's their judges being blocked. The party not currently in control of the White House and Senate often sees less crisis than opportunity in a dwindling bench. Moreover, when the entire judicial selection process has been as fiercely politicized as it is has become lately, most Americans may suspect that empty benches might be better for democracy than full ones. But judicial vacancies are disastrous for Americans, all Americans, and not merely for partisan reasons, but also for practical ones. That's why in a recent speech, Justice Anthony Kennedy warned: ''[I]t's important for the public to understand that the excellence of the federal judiciary is at risk. If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled.''

Yet this issue, which seems to light up editorial writers and Brookings scholars with such ease, appears to leave the rest of you cold. So here we are taking one last crack at scaring your pants off with some strictly nonpartisan facts about the dangers of judicial vacancies.

Justice delayed truly is justice denied. There are approximately 850 lower-court federal judgeships, of which more than 100 are currently vacant, while 49 openings in 22 states are classified ''judicial emergencies.'' Eighty-three of these are on the district courts—the trial courts that decide every important federal question in the country, on issues ranging from civil rights to environmental, economic, privacy, and basic freedoms. Whereas judicial obstruction once reached no further than the federal appeals courts, for the first time even noncontroversial district court nominees are being stalled by arcane Senate reindeer games. It stands to reason that if you can't get into a courtroom, if the docket is too packed for your case to be heard promptly, or if the judge lacks sufficient time to address the issues raised, justice suffers. This will directly affect thousands of ordinary Americans—plaintiffs and defendants—whose liberty, safety, or job may be at stake and for whom justice may arrive too late, if at all. In some jurisdictions, civil litigants may well wait two to three years before going to trial. In jurisdictions with the most vacancies, it will often take far longer for published opinions to be issued, or courts will come to rely on more unpublished opinions. More worrisome still, because the Speedy Trial Act requires that courts give precedence to criminal cases, some backlogged courts have had to stop hearing civil cases altogether.

Overtaxed federal judges can't do justice at some point. Take, for instance, the federal court based in Denver, where five active judges are doing the work that ought to be done by seven. The Judicial Conference of the United States suggests the court needs another judgeship and has labeled the two vacancies a ''judicial emergency'' because the judges there each carry 593 instead of the 430 cases deemed optimal. Alliance for Justice today put out a new report on the jurisdictions designated as judicial emergencies. Among their findings: Judicial emergencies have more than doubled over the first 20 months of the Obama administration, and judicial emergencies now exist in 30 states. In many jurisdictions, judges who should have retired years ago are still actively hearing cases on courts that can't afford to lose even one more judge. This places unfair, undue pressure on every federal judge now sitting. Most judges have been stoic in the face of mounting work and caseloads. Few openly complain, lest they appear to be taking sides in the confirmation wars. Still the crisis is so urgent that some judges have begun to speak out: In May, Chief Judge Wiley Daniel of the U.S. District Court in Denver wrote to the majority and minority leaders in the Senate urging prompt confirmation and explaining that lingering vacancies impede public access to justice. Six highly regarded retired federal judges at the same time wrote to the senators that the current gridlock is not tenable for a nation ''that believes in the rule of law.'' In 1997 and again in 2001, Chief Justice William Rehnquist admonished the White House and Senate, then in control of opposite parties, to fill the many vacancies for the good of the nation. Imagine how you would feel if your heart surgeon had to perform thousands of surgeries each day. That's how worried you should be about federal judges forced to manage ever-expanding caseloads.

Potential judges won't agree to be nominated. Depending on who's doing the calculations, the average length of time between being nominated and confirmed has more than quadrupled in the Obama administration. As a result of procedural shenanigans in the Senate, nominees may remain in limbo for months, with careers and law practices stuck on hold as they await a vote that may never come. Indeed, 6th Circuit Judge Jane Stranch waited 13 months for a 71–21 vote, while Judge Albert Diaz, a 4th Circuit nominee, has waited nearly 11. As the wait for confirmation drags on ever longer, the best nominees will be inclined to start to wonder whether it's worth the bother. Many excellent potential nominees may not even entertain the prospect of judicial service anymore. As President Stephen Zack, president of the American Bar Association, recently put it: ''The current gridlock discourages anyone from subjecting themselves to the judicial nomination process.''

The more seats remain vacant, the greater the incentive to politicize the process. In the George W. Bush administration, the judicial-vacancy rate dropped to 4 percent. Now it's up to 10 percent again. The stakes become higher and higher as the opportunity to significantly reshape the federal bench becomes more real. The incentive for a Senate minority to obstruct nominees also grows with the vacancy rate. The party not in control of the White House invariably believes it will recapture the presidency in the next election and thus has the opportunity to appoint judges more to its liking. Accordingly, each nominee obstructed now is another vacancy reserved for the out-of-power party's president. These dynamics are evident with the midterm elections approaching: The process has now essentially shut down. That's why only one appellate nominee even received floor consideration between April 23 and Sept. 12 of this year.

The rampant politicization of the selection process is undermining public respect for the co-equal branches of government. President George W. Bush's use of the White House for a ceremony introducing his first 11 appellate nominees and his promotion of his judicial nominees exacerbated the sense that federal judgeships were a political prize for the winning party. Obama has attempted to depoliticize the confirmation process by naming judges generally regarded as centrist and moderate—much to the dismay of many liberals. But it has changed nothing. When the Senate confirmation process degenerates into cartoonish charges of judicial unfitness, name-calling, recriminations, and endless paybacks, the consequences go far beyond the legitimacy of Congress, to the legitimacy of the courts themselves. As courts are batted around for partisan political purposes, nominees and judges appear to be purely political actors—no different than members of Congress or the president. That doesn't just hurt judges. It hurts those of us who rely on judges to deliver just outcomes.

Americans watching the confirmation wars won't ultimately recall which president named which judge or what the final vote was. But they may begin to accept as normal an inaccurate and deeply politicized vision of judges as a bunch of alternating partisan hacks and a federal bench that is limping, rather than racing, to do justice.

NATIONAL HOME CARE AND HOSPICE MONTH

Mr. WYDEN. Mr. President, our country strives to provide exceptional support for the sick, elderly and terminally ill in home and hospice settings. These vulnerable individuals, as well as their family caregivers, are indebted to the many professionals and volunteers who have made it their life's work to serve those in greatest need. Nearly 83,000 hospice professionals, 46,000 hospice volunteers and 1 million home health providers, nationally, contribute significantly to our health care system through their compassion and commitment.

Hospice care provides humane and comforting support for over 744,000 terminally ill patients and their families each year. These services include pain control, palliative medical care and social, emotional and spiritual services.