I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I ask unanimous consent that the quorum call be rescinded.

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

DONALD NOMINATION

Mr. ALEXANDER. Madam President, later today the Senate will consider the nomination by the President of Judge Bernice Donald for the Sixth Circuit Court of Appeals. Judge Donald is from Memphis, TN. I know her well. I am here today to introduce her to my colleagues and to encourage them to support her confirmation.

Judge Donald has been before the Senate before. She has been a Federal district judge since 1995. Our Judiciary Committee in the Senate has looked over her qualifications again and has recommended to us without dissent. The American Bar Association has reviewed her credentials and said she is either qualified or well qualified.

I think there is not much doubt about her fitness to serve on the court of appeals, so in my remarks I would like to talk more about Judge Donald’s role in the community and her role as a pioneer in our country during her lifetime. She is the sixth of 10 children. Her parents were a domestic worker and a self-taught mechanic in DeSoto County, MS, which is just south of Memphis. As a young person, she was among the first African Americans to integrate in her high school during the period of desegregation. She obtained a bachelor’s from the University of Memphis and graduated from its law school. She focused her career at the beginning working among the most vulnerable citizens in Memphis in the Office of Legal Defender.

Here is where the pioneer story continues, not just in desegregating her high school or working with vulnerable citizens, but only 3 years after she left law school, she began a judicial career that has spanned nearly three decades. She became the first African-American female judge in the history of our State in 1982. Six years later, the Sixth Circuit Court of Appeals, upon which she has been nominated to serve by the President, appointed her to serve as U.S. bankruptcy judge for the Western District of Tennessee. Again she made history—an African-American female judge had been appointed as a bankruptcy judge in the United States. Then, in 1995, as I mentioned earlier, President Clinton nominated her to be a Federal district judge. On December 22 of that year the Senate confirmed her by unanimous vote, and she became the first African-American female district court judge in the history of Tennessee. She served in that capacity for 15 years.

She has flourished in her career, not just on the court but in her profession. She has just concluded a 3-year term as Secretary of the American Bar Association, voted to serve a second term on its Committee on Governance and on its Board of Governors. She has been equally active in the local and Tennessee bar associations. She gives a good deal of her time to community organizations: the Memphis Literacy Council, the University of Memphis alumni board, Big Brothers, Big Sisters, Calvary Street Ministry, the YWCA, and others.

It is coincidental, but I think it is fitting that Judge Bernice Donald, a pioneer in so many ways in our State’s history, will be the first nomination for the Federal bench that this body will consider after the opening of the Martin Luther King Memorial in the Nation’s Capital. Her life, which is full of education and service and achievement, is a testimonial to the success of Dr. King’s movement and the kind of leadership he inspired.

I commend her on all that she has accomplished both in her profession and in our community. I know Memphis is proud of her. I look forward to voting in favor of her confirmation this afternoon, and I hope my colleagues will do so as well. I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CASEY). Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, is there a nominee to report?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF BERNICE BOUIE DONALD TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The bill clerk read the nomination of Bernice Bouie Donald, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes of debate, equally divided, in the usual form.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I wish to speak in support of the nomination of Bernice Bouie Donald as a U.S. Circuit Judge for the Sixth Circuit. With today’s vote, we will have confirmed 34 article III judicial nominees during this Congress.

We continue to make great progress in processing President Obama’s judicial nominees. We have taken positive action on 78 percent of the judicial nominations submitted during this Congress. The Senate has confirmed 63 percent of President Obama’s nominees since the beginning of his Presidency, including two Supreme Court Justices, which everyone may recall was a lengthy process.

Despite our productive efforts, we continue to hear unsubstantiated and unfounded charges of delays and obstruction on the part of the minority party of the Senate. Over the August recess, opinion writers and bloggers parroted one another in churning out this message of obstruction on the part of the Republicans. I am not surprised to see this from outside groups. However, I was very disappointed the White House joined in publishing a distorted version of the Judiciary Committee’s recommendation of a nominee, made a meeting this year with the White House Counsel’s Office, and at that meeting I expressed my intent to move forward as the Republican leader of the Judiciary Committee Republicans on confirming nominees. I thought we had a productive and cooperative relationship with the White House. Furthermore, I have demonstrated a record, on the part of the Republicans on the Judiciary Committee, of cooperation and action regarding judicial nominees.

But in a White House blog that was titled “Record Judicial Diversity, Record Judicial Delays” the White House characterized “the delays these nominees are encountering” as unprecedented. The White House also claimed a short memory or a very limited definition to characterize the nominations process as “unprecedented.”

To illustrate, the blog cites a statistic on the average wait time between the Judiciary Committee reporting out a nominee and confirmation on the Senate floor as evidence of an unprecedented delay. For example, it indicates circuit nominees of President Bush only waited 28 days, while President Obama’s circuit nominees waited 151 days.

The nominations process, as everyone knows but maybe the White House needs to be informed about, is more than Senate floor action. It starts with the President actually nominating somebody. I have previously commented on the White House delay in sending nominations and have criticized some of the qualities of the nominees the White House has submitted. I was fortunate to have an opportunity to work with the President on that; today, but after a nomination is received, there is a process for hearing, for questions, and for committee debate prior to our committee vote. For whatever reason,
the White House blog fact sheet ignored the bulk of the process.

The record shows, then, that we are moving nominees through committee much faster than President Bush’s nominees. For instance, President Obama’s circuit court nominees were only waited, on average, 68 days for a hearing. President Bush’s circuit court nominees were forced to wait over 247 days. President Obama’s district court nominees have been afforded a hearing in just 78 days. President Bush’s district court nominees, on the other hand, had to wait close to 120 days. So we can see how wrong the White House blog is when they just cite the waiting period between the committee reporting out and actually voting on it.

Not only are President Obama’s judicial nominees receiving hearings quicker than those of President Bush, they are also being reported out of committee more quickly. Circuit court nominees have been reported to the Senate floor in just 118 days, while President Bush’s circuit court nominees were held for 369 days before they saw a vote in committee. The same is true for district court nominees. President Obama’s nominees have been reported in just 129 days, while President Bush’s district court nominees waited 148 days. Despite the so-called obstruction, we are confirming President Obama’s circuit court nominees faster than those nominated by President Bush. That is the cooperation I promised. Thus far, circuit court nominees have been confirmed, on average, in 259 days. President Bush’s circuit court nominees waited, on average, 350 days.

The White House blog also stated that 21 months is the “longest wait for one of President Obama’s judicial confirmations.” This is neither unprecedented nor uncommon. The Democrats should know; they held President Bush’s circuit court nominee Raymond Kethledge for 23 months before he was confirmed. President Obama’s district court nominees are also being reported out of committee more quickly. Circuit court nominees are being confirmed in just 78 days. President Bush’s district court nominees waited 148 days. Despite the so-called obstruction, we are confirming President Obama’s circuit court nominees faster than those nominated by President Bush. That is the cooperation I promised. Thus far, circuit court nominees have been confirmed, on average, in 259 days. President Bush’s circuit court nominees waited, on average, 350 days.

It will also enhance the ability of the judges to establish precedents. It will enhance the ability of the judges to establish precedents.

The American Bar Association’s Standing Committee on the Federal Judiciary has given Judge Donald a rating of substantial majority “well-qualified”; minority “qualified.”

Mr. President, if I could, I wish to say a few words about her. Judge Donald received her undergraduate and law degree from the University of Memphis. After graduating from law school, Judge Donald worked for a few months as a sole practitioner. In April of 1980, she began working only that summer at the Memphis Area Legal Services Clinic. In November of 1980, she began working as an assistant public defender at the Shelby County Public Defender’s Office.

In 1999, Judge Donald was elected to serve as a judge on the Court of General Sessions in Shelby County. As a general sessions judge, Judge Donald presided over trials of State misdemeanor offenses, and the preliminary hearings of State felony cases involving alleged crimes against persons as well as property.

In 1988, the U.S. Court of Appeals for the Sixth Circuit appointed Judge Donald to a 14-year term on the Bankruptcy Court.

In 1996, Judge Donald was confirmed by the Senate and appointed by President Clinton as United States District Judge for the Western District of Tennessee. She has served as a Federal judge for the past 15 years.

The Leahy-Smith America Invents Act enjoys the widespread support of a large number of industries and other stakeholders from within the United States patent community.

I am pleased to support the Leahy-Smith America Invents Act, and I urge my colleagues to vote for cloture on the motion to proceed so we can get this bill done as soon as possible.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. Grassley. Mr. President, I yield the floor. The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we are on the question of the passage of the America Invents Act. I urge my colleagues to support the motion to proceed to H.R. 1249, the Leahy-Smith America Invents Act. This bipartisan legislation will make our patent system more effective and more efficient. It will enhance transparency and improve certainty in the patent process. It will also enhance the ability of the Patent and Trademark Office to cut its backlog and process patent applications in a more expeditious manner.

Ultimately, this bill will help promote innovation and technological advancements and will provide a stimulus for American businesses and, obviously, will help generate new jobs.

Mr. LEAHY. Mr. President, if I could I wish to say a few words about Vermont. Vermont. I was born in Vermont. I have lived there all my life. We live on a dirt road in a small town, Middlesex, up about 1,000 feet, in an 1850s farmhouse. It means a lot to us. It is a place my wife Marcelle and I spent part of our lives ago. But I saw something I had never seen before in Vermont. Ten days ago, Vermont bore the full brunt of the then-Tropical
Storm Irene as it dumped more than 6 inches of rain across the State in just a few hours. You have to understand, in our small State—with the Green Mountains running down the spine of it, north to south—the narrow valleys of the East Coast. Irene, where my home is, was historic. The roads, and rivers are historically intertwined, were particularly hard hit as gentle rivers and streams became rushing torrents of destruction. Whole towns were cut off from the outside world for days. You could fly over Vermont and could not see a town completely marooned—every road going into it, every bridge going into it gone. Homes, businesses, water systems, and miles of roads were swept away. Even worse, some Vermonters lost their lives in these devastating floods.

In our State, we have had an unprecedented wave of flooding this year. We had two spring events previously declared as major disasters. Vermonters have shouldered these great burdens. We had $1 billion of her Republican budget. Of the State, all walks of life. We are meeting this new crisis with the same courage, cooperation, and resilience we Vermonter have always shown.

I applaud the brave workers—police, the fire department, the EMS, and others—the National Guard members who have worked around the clock. Our National Guard in Vermont has been joined by the National Guard from Illinois and Maine—organizations that have had offers from our other adjoining States. I also applaud the power crew and road crews. I remember how impressed I was looking down there from the helicopter and seeing this long line of power trucks coming down the road and knowing they are going to be working around the clock. I also applaud the many others who have helped in the recovery and rebuilding process—our local Red Cross and other service organizations.

But there is one more—FEMA. In Vermont it is only 660,000 people—is stretched to the limit right now, and we need both immediate and ongoing assistance in recovering from these enormous setbacks. Winter is fast approaching. In Vermont, snow will be flying in a matter of weeks, certainly in a matter of a couple months. We must move quickly to secure our homes and businesses, restore our roads, our bridges, our water systems, our schools, and our medical facilities. With us, we need to accomplish so much, we need the full and immediate support of FEMA and so many of our Federal agencies.

I appreciate President Obama’s swift approval of Governor Shumlin’s request to declare most of Vermont a Federal disaster area—something all of us in the Vermont delegation joined him in. But I am greatly concerned FEMA may not have adequate resources to meet the immediate assistance needs of Vermont. I do not consider us an island here. We know a whole lot of other States were badly hurt by Irene. FEMA has less than $600 million in its disaster account for the rest of fiscal year 2011. OMB said today that FEMA needs at least $1.5 billion for recovery assistance in States affected by Hurricane Irene.

We need to act quickly to find a solution to this pressing problem. I do not think any of us want to get into a situation where we underfund FEMA at this critical juncture, and then have FEMA run out of resources next spring, just as recovery efforts are getting on the East Coast.

Given the breadth and depth of Irene’s destruction, on top of the ongoing disasters already declared in all 50 States, I am going to continue to work with the Democratic leader, the Republican leader, the Appropriations Committee, and all of my colleagues to ensure that FEMA has the resources they need to help all of our citizens at this time of disaster—not just in Vermont but in all of our States.

IRAQ

Mr. President, as many Members know, I opposed the war in Iraq, believing it had nothing to do with 9/11. It turned out it had nothing to do with 9/11. I thought it had nothing to do with mass destruction. It turned out there were no weapons of mass destruction. Iraq is a country that bore no threat to the United States. It did to Iran but not to the United States. We have spent hundreds of billions, ultimately well over a trillion dollars, in Iraq. Year after year that money is just sent—no offset; it is put on the credit card. It is time to get out of Iraq and start thinking about people in America. It is time to take care of Americans. The needs of Americans are not just in a disaster but in the needs of Americans in their education, their medical care, our scientific research to find cures for cancer and Alzheimer’s, to take care of the housing needs of Americans, to take care of our rivers and bridges. It is time to start worrying about this great country of ours. It is time to start paying for that which can benefit the American people and make sure we have enough to care for the families and our returning soldiers who so bravely answered the call. Let’s start talking about the needs of 325 million Americans. Let’s come home to the things we need. Because if we do that, we can then still be the force for good throughout the world. We can still fulfill commitments, legitimate commitments we have around the world. We can still be the humanitarian nation we have always been when there have been disasters in Haiti, in Indonesia, in Africa, or elsewhere. But we have neglected America too long.

Mr. President, I understand I have some time.

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. LEAHY. How much?

The PRESIDING OFFICER. Eight minutes remaining.

Mr. LEAHY. I thank the Presiding Officer.

Mr. President, I was disappointed that before the August recess, the Senate was not able to take greater steps to address the serious judicial vacancies crisis on Federal courts around the country. As we resume consideration of this legislation, there are 20 nominees fully considered by the Senate Judiciary Committee and ready for final Senate action. Of those, 16 were approved by the Judiciary Committee unanimously, without a single Republican or Democratic Senator opposing these nominations.

The nomination of Judge Bernice Donald of Tennessee is one such nomination. This is a nomination that has been waiting for Senate consideration, despite the support of her Republican home State Senators, since May 9. Nearly 4 months ago, the Judiciary Committee favorably reported her nomination without opposition. This is reminiscent of the nomination of Jane Stranch of Tennessee. She, too, had the support of her Republican home State Senators, but her confirmation was nonetheless stalled—inexplicably—by Senate Republicans. Judge Stranch was finally confirmed in September 2010, after an extended and unnecessary delay. The Senate confirmations were the subject of a column by Professor Carl Tobias in early August, which I inserted in the Record on August 2. I, too, had hoped the Senate would be able to vote on this nomination last month. I am glad that we finally have agreement for a vote tonight.

At this point in the Presidency of George W. Bush, 144 Federal circuit and district court judges had been confirmed. On September 6 of the third year of President Clinton’s administration, 162 Federal circuit and district court judges had been confirmed. By comparison, although there are 20 judicial nominees stalled and awaiting consideration by the Senate—many of them stalled since May and June—even after the confirmation of Judge Donald, the total confirmations of Federal circuit and district court judges confirmed during the first 3 years of the Obama administration will only be 96.

In the 17 months I chaired the Judiciary Committee during President Bush’s first term, the Senate confirmed 100 Federal circuit and district judges. By contrast, President Obama is approaching his 32nd month in office and we have yet to reach that total. The Senate has a long way to go before the end of next year to match the 205 confirmations of President Bush’s judicial nominees during his first term.

To understand the strain on the Federal judiciary and the American people, it is important to note another set of comparisons. The number of judicial vacancies was reduced during the first year of the Bush and Clinton administrations. The number increased during early September in the third year of the Bush administration had been reduced to 54. The vacancies in early September in

September 6, 2011
the third year of the Clinton administration had been reduced to 55. By contrast, the judicial vacancies now in September of the third year of the Obama administration stand at 93. As the Congressional Research Service confirmed in its report, this is a historically high level of vacancies and this is now the longest period of historically high vacancy rates on the Federal judiciary in the last 35 years.

Even though Federal judicial vacancies have remained near or above 90 for more than 2 years, the Senate's Republican leadership continues to delay votes on many qualified, consensus nominations. After tonight, there will remain 15 unanimously reported nominees stalled on the calendar. This is not the way to make real progress. In the past, we were able to confirm consensus nominees more promptly, often within days of being reported to the full Senate. They were not forced to languish for months. The American people have a right to have our Federal courts filled with qualified, experienced federal judges who can offer justice to Americans around the country.

It is not accurate to pretend that real progress is being made in these circumstances. Vacancies are being kept high, consensus nominees are being delayed, and it is the American people and the Federal courts that are being made to suffer. This is their area in which we must come together for the American people. There is no reason Senators cannot join together to finally bring down the excessive number of vacancies that have persisted on Federal courts throughout the Nation for far too long.

At a time when judicial vacancies remain near or above 90, these needless delays perpetuate the judicial vacancies crisis that Chief Justice Roberts wrote of last December and that the President, the Attorney General, bar associations, and chief judges around the country have urged us to join together to end. The Senate can and should be a better job working to ensure that our Federal courts provide justice to Americans across the country.

We were able to lower vacancies dramatically during President Bush's years in office, cutting them in half during his first term. The Senate reversed course during the Obama administration, and with Republican objections slowing the pace of confirmations, judicial vacancies have been at crisis levels for over 2 years. As a recent report by the Constitutional Accountability Center noted, “Never before has the number of vacancies risen so sharply and remained so high for so long during a President's term.” I ask unanimous consent that an August 5 letter from the editors of the Washington Post, from Wally Henderson, entitled “Remiss in confirming judges,” and an August 4 article in Politico from Andrew Blotky and Doug Kendall entitled “It’s Senate’s duty to confirm judges,” be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (see Exhibit 1)

Mr. LEAHY. Over the 8 years of the Bush administration, from 2001 to 2009, we reduced judicial vacancies from 110 to a low of 34. The vacancy rate—which we reduced from 10 percent to 6 percent by this date in President Bush’s third year, and ultimately to less than 4 percent early in 2008—is back above 10 percent. Federal judicial vacancies now stand at 93.

Time and time again over the last 2½ years, I have urged the Senate to come together and work to address this crisis. At the beginning of this year, I called for a return to regular order in the consideration of nominations. We have seen that approach work on the Judiciary Committee. I have thanked the Judiciary Committee’s ranking member and all the membership many times for his cooperation with me to make sure that the committee continues to make progress in the consideration of nominations. His approach has been the right approach. Regrettably, it has not been matched on the floor, where the refusal by Republican leadership to come to regular time agreements to consider nominations has put our progress—our positive action—at risk.

I expect the committee in the weeks ahead to continue to make progress and favorably report superbly qualified, consensus judicial nominations to fill vacancies in States throughout the country, in States with Democratic and Republican Senators. Most of these nominations will, I expect, join the 15 on the calendar after tonight’s vote that were reported unanimously. I hope that the Americans in those districts will not have to wait for months for someone to serve in those vacancies and ensure that the Federal courts in their States have the judges they need.

Republican obstruction has led to a backlog of dozens of judicial nominations pending on the Senate’s Executive Calendar. Half of the judicial nominations on the calendar would fill judicial emergency vacancies. Many were ready for final consideration and confirmation in May and June.

Republican leadership should explain to the people and Senators from South Carolina, Missouri, Louisiana, Maine, New York, Texas, Connecticut, Pennsylvania, and Florida why there continue to be vacancies on the Federal courts in their States that could easily be filled if the Senate would vote on the President’s qualified, consensus nominees. Yet those nominees still wait for months on the Senate’s calendar. These damaging delays leave the people of these States to bear the brunt of having too few judges available to do the work of the Federal courts.

All 20 of the judicial nominations on the calendar today have been favorably reported by the Judiciary Committee after a fair but thorough process. We review extensive background material on each nominee. All Senators on the committee, Democratic and Republican, have the opportunity to ask the nominees questions at a live hearing. We also have the opportunity to ask questions in writing following the hearing and to meet with the nominees. All of these nominees have a strong commitment to the rule of law and a demonstrated faithfulness to the Constitution. They should not be delayed for weeks and months needlessly after being so thoroughly and fairly considered by the Judiciary Committee.

I continue to urge the Senate to join together to end the judicial vacancies crisis that concerns Chief Justice Roberts, the President, the Attorney General, bar associations, and chief judges around the country. I hope that this month Senators will finally join together to begin to address the excessive number of vacancies that have persisted on Federal courts throughout the Nation for far too long. We can and must do better. Vacancies are being kept high, consensus nominees are being delayed, and American people and the Federal courts that are being made to suffer.

EXHIBIT 1

[From The Washington Post, Aug. 5, 2011]

REMISS IN CONFIRMING JUDGES

In Ben Pershing’s close-to-complete Aug. 2 Fed Page round-up of the most important stories overshadowed by the debt-ceiling debate (“Debt debate isn’t only story on Capitol Hill,” Aug. 1, Session), one story that failed to make the cut was how the Senate’s refusal to vote on 20 judicial nominees before the recess has led to almost as many vacancies on the federal bench—111—as there were in January.

During the past two months, the Senate Judiciary Committee and Senate Republican Senators. Most of these nominations will, I expect, join the 15 on the calendar after tonight’s vote that were reported unanimously. I hope that the Americans in those districts will not have to wait for months for someone to serve in those vacancies and ensure that the Federal courts in their States have the judges they need.

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EXHIBIT 1

[From The Washington Post, Aug. 5, 2011]

REMIT’S SENATE’S DUTY TO CONFIRM JUDGES

(By Andrew Blotky and Doug Kendall)

While Washington has been consumed by the debt ceiling crisis, another serious crisis demands the attention of President Barack Obama and the Senate: the threat to justice by overworked and understaffed. Today’s federal judiciary resembles our armed forces—
stretched thin and deployed on multiple tours of duty.

There are now almost 90 empty seats on the federal bench, with 22 more retirements on the horizon.

Make no mistake, judges now on the bench are doing their part—and then some. Last month, federal Judge Malcolm Muir died in his chambers at age 96, while working over Security appeals. Muir had continued to work literally until his last breath, to reduce the case backlog caused by a judge shortage. He was America’s fourth oldest judge on the federal bench when he died. Last December, U.S. District Judge James F. McClure Jr. died at age 79—also while working at the courthouse.

With fewer new judges being confirmed, the branch of government is increasingly run by judges working well into their 80s, 90s and even 100s.

“...the work of the courts continues. Senate Republicans refuse to agree to votes for well-qualified nominees, who enjoy broad cross-branch support of Republican and Democratic colleagues on the Senate Judiciary Committee. Today, 16 such nominees are waiting for a vote by the Senate, with four more qualified nominees approved by the Judiciary Committee, and new nominations being added regularly to the Senate calendar.

Some Republican senators are blocking— or placing holds—on judicial nominations for reasons unrelated to justice, to serve their own political interests. Republican senators are also delaying or blocking nominees who would fill seats in courtrooms so overwhelmed with cases that they are deemed by the Administrative Office of the United States Courts to be “judicial emergencies.” It is a level of obstruction not seen under any previous president in U.S. history.

As the story. The glacial pace of judicial confirmations has seen the number of judicial vacancies explode from 55, when Obama took office, to 66 today. By this time in the Bush administration, the Senate had confirmed 40 percent more judges than it has during the Obama administration.

Astonishingly, in the past two months, the Senate has voted on just 11 nominations. The chamber could have easily confirmed judges while awaiting a final debt ceiling deal. In previous terms, judges confirmed have confirmed 40 percent more judges than it had during the Bush administration.

It is time for the Senate to do what the Constitution commands—advise and consent to the President’s judicial nominations. The long-term health of the third branch of government depends on it—and so do the American people.

Mr. LEAHY. I have outlined where we stand in comparison to the progress made to work through the current backlog of judges. I have also noted why so many Democrats—controlled Senate did for President Bush. I wish to be able to do the same for President Obama.

AMERICA INVENTS ACT

Mr. LEAHY. Mr. President, I ask unanimous consent that I use my remaining time to speak as in morning business about the America Invents Act—the cloture vote that will be taken tonight on proceeding to that important measure.

The PRESIDING OFFICER. Without objection, it is ordered.

Mr. LEAHY. The Senate is today turning its attention back to the America Invents Act—a measure that will help create jobs, energize the economy and promote innovation without adding a penny to the deficit. This legislation is a key component of both Democratic and Republican jobs agendas, and is a priority of the Obama administration.

Too often in recent years, good legislation has failed in the Senate because bills have become politicized. That should not be the case with patent reform. Innovation and economic development are not uniquely Democratic or Republican objectives—they are American and are a priority of the Obama administration.

And that is why a Democratic chairman of the Senate Judiciary Committee can stand on the floor of the Senate and advocate, as I do today, that the Senate pass a House bill, H.R. 1249, sponsored by the Republican chairman of the House Judiciary Committee, LAMAR SMITH of Texas. As Chairman Smith wrote earlier this year in a joint editorial, “Patent reform unleashes American innovation, allowing patent holders to capitalize on their inventions and create products and jobs.”

This bill, which passed the House with more than 300 votes, will make crucial improvements to our outdated patent system. These improvements can be divided into three important categories that are particularly noteworthy.

First, the bill will speed the time it takes for applications on true inventions to issue as high quality patents, which can then be commercialized and used to create jobs. There are nearly 700,000 applications pending at the Patent and Trademark Office (PTO) that have yet to receive any action by the PTO. The Director of the PTO often says that the next great invention that will advance our economic growth is like waiting in line to enter the post office.

The America Invents Act will ensure that the PTO has the resources it needs to work through its backlog of applications more quickly. It also accomplishes this objective by authorizing the PTO to set its fees and creates a PTO reserve fund for any fees collected above the appropriated amounts in a given year—so that only the PTO will have access to these fees.

Importantly, the bill also provides immediate tools the PTO needs to fast track applications, and continues discounts for fast tracked applications respectfully to provide limited monopoly value for inventors, while upholding inventors’ rights. No existing patent will expire before the end of its term. Three years into President Obama’s administration, we have yet to see the progress other nations have made.

 imported goods are often produced in other countries.

In 2010, America Invents Act authorize the PTO to create a postgrant review process to weed out recently issued patents that should not have been issued in the first place.

The bill will also improve upon the current system for challenging the validity of a patent at the PTO. The current inter partes reexamination process has been criticized for being too easy to initiate and used to harass legitimate patent owners, while being too lengthy and unwieldy to actually serve as an alternative to litigation when users are confronted with patents of dubious validity.

Third, the America Invents Act will streamline our patent filing system from a first-to-invent system to the more objective first-inventor-to-file system, used throughout the rest of the world, while retaining the important grace period that will protect inventors from patent challenges.

In particular, as business competition has grown global, and inventors are increasingly filing applications in the United States and other countries for protection of their inventions, our current system puts American inventors and businesses at a disadvantage.

The differences cause confusion and inefficiencies for American companies
and innovators. These problems exist both in the application process and in determining what counts as “prior art” in litigation. We debated this change at some length in connection with the Feinstein amendment in March. That amendment was rejected by the Senate by a vote of 87 to 13. The Senate has come down firmly and decisively in favor or modernizing and harmonizing the American patent system with the rest of the world.

The House, to its credit, improved on the Senate bill in this area by including an expanded prior user right with the transition to a first-inventor-to-file system. Prior user rights are important for American manufacturing, in particular.

There is widespread support for the America Invents Act, and with good reason. In March, just before the Senate voted 95–5 to pass the America Invents Act, The New York Times editorialized that the America Invents Act will move the country "toward a more effective and transparent patent protection system" that will "encourage investment in inventions" and "should benefit the little guy" by transitioning to a first-Inventor-to-file system.

A few weeks ago, the Washington Post editorial board added that “[t]he six decades since its last overhaul, the patent system has become creaky," but the patent bill "poised for final approval in the Senate would go a long way toward fixing its problems.

The Obama administration issued a Statement of Administration Policy in connection with the House bill, in which it argued that “[t]he bill’s much-needed reforms to the Nation’s patent system will speed deployment of innovative products to market and promote job creation, economic growth, and U.S. economic competitiveness all at no cost to American taxpayers.”

The House bill is not the exact bill I would have written. It contains provisions that were not in the Senate bill, and it omits or changes other provisions from the Senate bill that I supported. But that is the legislative process, and the core elements of the House bill are identical or nearly identical to the core elements of the Senate bill. In addition, the House bill retains amendments adopted during Senate consideration of S. 23, including amendments offered by Senator BENNET, Senator MENENDEZ, Senator KIRK, Senator STRICKER, BINGMAN, and Senator REID, among others.

The America Invents Act, as passed by the House, will not only implement an improved patent system that will grow the economy and create jobs, but it is the product of a process of which we should all be proud. Democrats and Republicans in the House and Senate have worked together with the administration and all interested stakeholders large and small to craft legislation that has near unanimous support.

I thank Senator KYL, the minority whip, for his comments early today. I agree with him that sending this House-passed bill directly to the President will begin the process of demonstrating to the American people that we can work together, Democrats and Republicans, House and Senate, on their behalf.

Those now advocating for enactment of the America Invents Act without further amendment include the United States Chamber of Commerce, the United Steelworkers, the National Association of Manufacturers, the Association of American Universities, BIO and PhRMA, Community Bankers, the Coalition for 21st Century Patent Reform, the Coalition for Patent Fairness, the Small Business & Entrepreneurship Council, and businesses representing virtually every sector of our economy.

In a recent letter from Louis Foreman, a well known independent inventor, he wrote of his support for the America Invents Act saying:

The independent inventor has been well represented throughout this process and we are in a unique situation where there is overwhelming support for this legislation. H.R. 1249 is the catalyst necessary to incentivize inventors and entrepreneurs to create the companies that will get our country back on the right path and generate the jobs we sorely need.

American ingenuity and innovation have been a cornerstone of the American economy from the time Thomas Jefferson examined the first patent application to today. A recent Department of Commerce report attributes three-quarters of America’s post-World War II economic growth to innovation. It is the patent system that incentivizes that innovation when it holds true to the constitutional imperative to “promote the progress of science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.”

The Founders recognized the importance of innovation. A number were themselves inventors. The Constitution explicitly grants Congress the power to “promote the progress of science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.” The time for Congress to undertake this responsibility and enact patent reform legislation into law is now.

The discoveries made by American inventors and research institutions, commercialized by American companies, and protected and promoted by American patent laws have made our system the envy of the world. But we cannot stand on a 1950s patent system and expect our innovators to flourish in 21st century world.

The America Invents Act will keep America in its longstanding position at the pinnacle of innovation. This bill will establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs, while making sure no party’s access to court is denied.

The President recently called on Congress to pass patent reform as soon as it returned from recess because it will create jobs and improve the economy without adding to the deficit. This bill is bipartisan, it is the product of thoughtful bicameral discussions, and it should be sent to the President’s desk this week. There is no reason for delay.

When we proceeded to the Senate version of this legislation last February, we did so by unanimous consent. Congress now needs to proceed with the Senate-passed patent reform legislation with 95 votes. It is disappointing that we are being delayed from completing this important legislation. Further delay does nothing for American inventors, the American economy or the creation of American jobs. It is time, time to take final action on the America Invents Act.

I see the time has arrived. Is the roll-call automatic?

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. Is all time yielded back?

Mr. LEAHY. I yield back.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Bernice Bouie Donald, of Tennessee, to be United States Circuit Judge for the Sixth Circuit?

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER), is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUHLO).

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

The result was announced—yeas 96, nays 2, as follows:

[Roll Call Vote No. 124 Ex.]

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<th>YEAS—96</th>
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<td>Brown (MA)</td>
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<td>Bruner</td>
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<td>Cantwell</td>
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<td>Cardin</td>
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The PRESIDING OFFICER. Are there any Senators in the Chamber de
necessarily absent: the Senator from

The PRESIDING OFFICER. Under the previous order, the motion to re-
consider is considered made and laid
upon the table, and the President will
be immediately notified of the Senate’s
action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Sen-
ate will resume legislative session.

LEAHY-SMITH AMERICA INVENTS
ACT—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will re-
port the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accord-
ance with the provisions of rule XXII of the
Standing Rules of the Senate, do hereby
move to bring to a close debate on the motion
to proceed to Calendar No. 87, H.R. 1249,
move to bring to a close debate on the mo-

Standing Rules of the Senate, do hereby
move to bring to a close debate on the mo-

standing for patent reform, shall be brought to a

For title 35, United States Code, to provide

proceed to H.R. 1249, an act to amend

Senate that debate on the motion to

imous consent, the mandatory quorum

previous order, the motion to re-

by unanimous consent, the motion is agreed to.

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

THE ECONOMY

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent to speak as if

in morning business.

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

The PRESIDING OFFICER. On this
vote, the yeas are 93, the nays are 5.

Three-fifths of the Senators duly cho-

sworn having voted in the affirmative, the motion is agreed to.

The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I

ask unanimous consent to speak as if

in morning business.

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

The PRESIDING OFFICER. On this
vote, the yeas are 93, the nays are 5.

The yeas and nays are mandatory
under the rule.

The clerk will call the roll.

Mr. DURBIN. I announce that the
Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

Mr. KYL. The following Senator is
necessarily absent: the Senator from
Florida (Mr. RUBIO).

The PRESIDING OFFICER. Are there any other Senators in the Chamber de-
siring to vote?

The yeas and nays resulted—yeas 93,
nays 5, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—93

Akaka

Brown (MA)

NAY—5

Boxer

Conrad

Hagan

Harkin

Hatch

Heiler

Hoeven

Hutchison

Inhofe

Inouye

Isakson

Johannes

Johnson (SD)

Kerry

Klobuchar

Kohl

Landrieu

Lautenberg

Leahy

Levin

NAY—5

NAYS—5

DeMint

Johnson (WI)

Lee

Wyden

Baucus

Whitehouse

Wicker

Wyden

Webb

Vitter

S5328

CONGRESSIONAL RECORD — SENATE

September 6, 2011

$11 an hour. But now they had a bit of
a pension, now they had health care,
and now they had a chance to actually
earn a 1-week vacation, something

many, many workers in America don’t have

the opportunity for. And when I hear
people say: Well, unions meant something

in the past, but they have outlived their

usefulness, that really tells you what that is all

about.

We celebrate that on Labor Day, but we also know the union movement is
under attack. We lose what has hap-

pened in the Ohio Statehouse, where legis-
ators in Columbus, most of whom were
elected by talking about lost jobs in

large part because of what happened in

the Bush administration and the 8

years previously, but people who were

very unhappy, as they have a right to be,
as they should be, because of lost
jobs, but what they have done is, after
getting elected, they have gone after

collective bargaining rights, worker

rights. They have attacked voter

rights. They have attacked far too

in many cases women’s rights.

Let’s be clear. It is not teachers and

firefighters and police officers who caused Ohio’s budget deficit. It is not

teachers and firefighters and police of-

ficers who caused what the implo-

sion our Nation has. Look at the his-

tory. It has been tax cuts for the

wealthy; it has been reckless spending,

overspending on corporate welfare, over-

spending on all kinds of things; it has

been regulatory agencies that has left our economy in ruins. As a re-

sult, we have a widening income gap,

with wages generally stagnant for the

last decade for middle-class and work-

ing-class voter citizens, wages stag-

nating or declining for most of the

workforce but salaries and bonuses
going up for people who are the most

privileged, the bankers and wealthy ex-

ecutives and CEOs.

Robert Reich recently pointed out

that 5 percent of Americans with the

highest incomes now account for 37

percent of all consumption. Reich

points out that when income is con-

centrated at the top, the middle class
doesn’t have enough purchasing power
to pull themselves out of this recession
economies suffers. The wealthiest
people can only spend so much. If the
middle class has their wages stagnant

or actually decline, there simply isn’t

the purchasing power we need to create

the demand to grow our economy. Our

economy has been most prosperous

when the middle class is thriving rath-

er than when we have these huge gaps

in income.

Today we have lost the consensus

that our Nation’s prosperity was tied
to a thriving middle class, where the

portunity was afforded to those seek-

ing to join it.

We used to see that consensus on

manufacturing, where an economy

built wealth and built strong commu-

nities and helped to keep America’s

premier exporter illustrated.

Now we see that same consensus

on manufacturing, where an economy

built wealth and built strong commu-

nities and helped to keep America’s

premier exporter illustrated.

Yet we