

For years now, young people will hear over and over that old cliché about refusing to quit. You can never give up. And I have to tell you the truth, it is a cliché I have used with my kids when they were moping around and grumbling: Oh my life is horrible. You say to them: You can't quit. You can't give up. Well, this team is going to allow parents in St. Louis and beyond for many years to say: See. See what happens when you don't give up. See what happens when you refuse to quit. You can win a championship if you just refuse to die. And that is exactly what our Cardinals did.

On behalf of Cardinal Nation and thousands of people around this country who were proud of what St. Louis represented—a fall classic with our classic Cardinals bringing home the victory for a city that loves them—God bless them all. And God bless the fans who understand it is okay to cheer for a sac fly, who understand baseball better than most fans around the country. They will now wait anxiously for spring training so we can begin once again our love affair with the St. Louis Cardinals.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Maine.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EXECUTIVE SESSION

NOMINATION OF EVAN J. WALLACH TO BE UNITED STATES CIRCUIT JUDGE FOR THE FEDERAL 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 assistant editor of the Daily Digest read the nomination of Evan J. Wallach, of New York, to be United States Circuit Judge for the Federal Circuit.

The PRESIDING OFFICER. Under the previous order, there is 15 minutes of debate equally divided and controlled between the Senator from Vermont and the Senator from Iowa, or their designees.

The Senator from Maine.

Ms. SNOWE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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 I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. LEAHY. Mr. President, I thank the majority leader for pressing forward to secure a vote on another of the 25 judicial nominees ready for Senate consideration. I am disappointed that the Senate Republican leadership would only agree to vote on 1 of the 25 judicial nominees ready and waiting for final Senate action. All 25 of the nominees are qualified and have the support of their home state Senators, Republican and Democratic. Twenty-one of these judicial nominations were unanimously approved by the Judiciary Committee. Senate Democrats are prepared to have votes on all these important nominations. I know of no good reason why the Republican leadership is refusing to proceed on 24 of the 25 nominations stalled before the Senate. At a time when the vacancy rate on Federal courts throughout the country remains near 10 percent, the delay in taking up and confirming these consensus judicial nominees is inexcusable.

I know that Senator REID is especially pleased that the Senate has the opportunity for a final vote on the nomination of Judge Evan Wallach to fill a vacancy on the Federal Circuit. Judge Wallach is an experienced jurist with a distinguished record who has been serving on the U.S. Court of International Trade. He received the highest possible rating from the American Bar Association's Standing Committee on the Federal Judiciary, unanimously "well qualified."

I am delighted that Judge Wallach's nomination has not been delayed as long as others. This nomination was reported by the Judiciary Committee on October 6. There is no good reason why all judicial nominations are not considered within a month of being reported, especially the consensus nominees reported unanimously by the Judiciary Committee. It is my hope that this timeline can be an example and set the standard for action on other nominations, as well. When the Senate approved the nomination of Judge Zippas of Arizona less than 1 month after it was reported by the committee, we showed that there is no need for additional delay. These needless delays perpetuate vacancies and deny the American people the judges needed in our courts to provide justice.

What is disappointing is that the Senate Republican leadership has yet to agree to votes on the long-pending nominations of Judge Chris Droney of Connecticut to fill a judicial emergency vacancy on the Second Circuit, Morgan Christen to fill one of several judicial emergency vacancies on the Ninth Circuit, or Judge Adalberto Jordan to fill a judicial emergency vacancy on the Eleventh Circuit. The Droney nomination has been stalled for 3½ months despite there being no opposition. The Christen nomination has been pending a month longer than Judge Wallach's and was also reported

unanimously. Judge Jordan's nomination is approaching 1 month on the Senate Executive Calendar despite his being a consensus nominee supported by both his Democratic and Republican home State Senators. Also pending is the nomination of Stephanie Thacker to fill a vacancy on the Fourth Circuit. All of these consensus circuit court nominations should be considered and approved without further delay. In addition, the Senate should give consideration to Caitlin Halligan's nomination. Her nomination to the DC Circuit was approved by the committee in March.

Judge Wallach is only the seventh of President Obama's circuit court nominations the Senate has considered this year, compared to 12 at this point in President Bush's third year. We are not doing nearly as well despite five additional circuit court nominations on the Senate Calendar awaiting a vote. By this point in the third year of President Bush's administration, the Senate had confirmed 29 of his circuit court nominees. By comparison, the Senate has confirmed only 22 of President Obama's circuit court nominees. By this point in the Bush administration, vacancies had been reduced to 42. By comparison, today they stand at 83. By this point in President Bush's first 3 years, the Senate had confirmed 167 of his Federal circuit and district court nominees. So far in the 3 years of the Obama administration, that total is only 115.

During President Bush's first 4 years, the Senate confirmed a total of 205 Federal circuit and district court judges. As of today, we would need another 90 confirmations over the next 12 months to match that total. That means a faster confirmation rate for the next 12 months than in any 12 months of the Obama administration to date. That would require Senate Republicans to abandon their delaying tactics. I hope they will. This is an area where the Senate must come together to address the serious judicial vacancies crisis on Federal courts around the country that has persisted for well over 2 years. We can and must do better for the millions of Americans being made to suffer by these unnecessary Senate delays.

More than half of all Americans—over 162 million—live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans just agreed to vote on the nominations now pending on the Senate calendar. As many as 24 States are served by Federal courts with vacancies that would be filled by these nominations. Millions of Americans across the country are harmed by delays in overburdened courts. The Republican leadership should explain why they will not consent to vote on the qualified, consensus candidates nominated to fill these extended judicial vacancies.

Senator GRASSLEY and I have worked together to ensure that each of the 25 nominations on the Senate Calendar was fully considered by the Judiciary

Committee after a thorough but fair process, including completing our extensive questionnaire and questioning at a hearing. This White House has worked with the home state Senators, Republicans and Democrats, and each of the judicial nominees being delayed from a Senate vote is supported by both home State Senators. The FBI has conducted a thorough background review of each nominee. The ABA's Standing Committee on the Federal Judiciary has conducted a peer review of their professional qualifications. When the nominations are then reported unanimously by the Judiciary Committee, there is no reason for months and months of further delay before they can start serving the American people.

No resort to percentages of nominees "processed" or "positive action" by the committee can excuse the lack of real progress by the Senate. 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 should not have to wait weeks and months for the Senate to fulfill its constitutional duty and ensure the ability of our Federal courts to provide justice to Americans around the country.

The American people need functioning Federal courts with judges, not vacancies. Though it is within the Senate's power to take significant steps to address this problem, refusal by Senate Republicans to consent to vote on consensus judicial nominations has kept judicial vacancies high for years. The number of judicial vacancies has been near or above 90 for over 2½ years. A recent report by the nonpartisan Congressional Research Service found that these delays have resulted in the longest period of historically high vacancy rates on Federal district courts in the last 35 years. These needless delays do nothing to help solve this serious problem and are damaging to the Federal courts and the American people who depend on them.

Mr. GRASSLEY. Mr. President, today the Senate will confirm Judge Evan Jonathan Wallach to be a U.S. circuit judge for the Federal Circuit. With this vote, we will have confirmed 54 article III judicial nominees during this Congress, and 18 in just over a month. In only eight sessions of Congress in the past 30 years has the Senate confirmed more judicial nominees.

Our progress extends beyond the Senate floor and into the Judiciary Committee, where 88 percent of President Obama's judicial nominees have had their hearing. That is compared to only 76 percent of President Bush's nominees at a comparable point in his Presidency, in the 108th Congress. To date, 72 percent of the judicial nominations made by President Obama have been confirmed. Overall, we have made real progress on 85 percent of the judicial nominees submitted this Congress.

Furthermore, these nominees have been processed in a very fair manner. Circuit nominees have had a hearing within 66 days after nomination, on average. President Bush's nominees were forced to wait 247 days. The same can be said of President Obama's district court nominees, who had their hearings, on average, in just 79 days. President Bush's district court nominees waited 120 days, on average, for a hearing.

President Obama's circuit and district nominees have been reported faster than those of President Bush—in fact, almost 35 percent faster. I would hope that my colleagues on the other side of the aisle would acknowledge this cooperation, and they sometimes do. But it is important to remind everyone that our duty as U.S. Senators is not to rubberstamp the President's nominees. We must carefully examine the records and qualifications of each nominee before us to determine if they are fit to serve the public for lifetime positions. I don't believe my constituents would expect any less.

The fact that we are here, confirming the 54th article III judicial nominee, shows we have been performing our due diligence. However, we will continue to hold quality confirmed over quantity confirmed.

I would like to say a few words about Judge Wallach.

Judge Wallach presently serves as a judge of the U.S. Court of International Trade. He was appointed to that court by President Clinton in 1995, following confirmation by the Senate.

I would note that the Federal Circuit, the court to which Judge Wallach is nominated, is the appellate court for the Court of International Trade. In addition to international trade, the court hears cases on patents, trademarks, government contracts, certain money claims against the U.S. Government, veterans' benefits, and public safety officers' benefits claims. Of particular interest to me, this court has exclusive jurisdiction over cases related to Federal personnel matters. That includes exclusive jurisdiction over appeals from the Merit Systems Protection Board, MSPB, which hears whistleblower cases under the Whistleblower Protection Act.

Evan Wallach received a bachelor of arts from the University of Arizona in 1973, his juris doctorate from University of California Boalt Hall School of Law in 1976, and his bachelor of laws from the University of Cambridge in 1981.

Judge Wallach began his legal career as an associate attorney with Lionel Sawyer & Collins where he eventually made partner. Over time, the emphasis of his practice became media law. He also defended libel actions and represented newspapers on day to day issues, including employee grievances, collection actions, and copyright protection.

While he remained with Lionel Sawyer & Collins, he took several leaves of

absences. From 1987 to 1988, Judge Wallach worked as a general counsel and public policy adviser to Senator HARRY REID. He also served as a judge advocate for the Nevada Army National Guard from 1989 to 1995. In 1991, Judge Wallach was called up to active duty to serve as an attorney in the Office of the Judge Advocate General of the Army-International Affairs Division during the first gulf war.

The American Bar Association Standing Committee on the Federal Judiciary has rated Judge Wallach with a unanimous "Well Qualified" rating.

Mr. REID. Mr. President, Judge Evan Wallach has been my friend for a very long time.

I have known him since he was a lawyer in Nevada. He worked at Lionel Sawyer & Collins for almost 2 decades.

He is a good man and a good jurist, and I believe he is a wonderful nominee for the U.S. Court of Appeals for the Federal Circuit.

He is also a scholar. Judge Wallach graduated from the University of Arizona and then got his law degree from UC Berkeley. But one law degree wasn't enough, so he went on to get another degree at the renowned University of Cambridge Law School in England.

Now he passes on that great wealth of knowledge to others. Since 1997, he has served as an adjunct law professor, teaching the law of war and other courses at Brooklyn Law School, New York Law School and several other worthy institutions.

Judge Wallach is also a patriot with a long history of serving his country in our armed forces.

He and his two older brothers volunteered to serve in Vietnam, and Judge Wallach was awarded the Bronze Star.

But his service to his country didn't end there. My friend served in the Nevada Army National Guard from 1989 until 1995 as an attorney-advisor.

During the Gulf War, in 1991, he took a leave of absence from his law practice—where he was a partner—to serve as an active-duty attorney-advisor. He served in the Office of the Judge Advocate General of the Army at the Pentagon.

He has also served as a Circuit Court judge in the 2nd, 3rd and 9th Circuits, and as a District Court judge in Nevada, New York and the District of Columbia. He even heard a patent case in Nevada and he wrote hundreds of opinions as a judge for the U.S. Court of International Trade.

Judge Evan Wallach served his country bravely at war. I know he will serve it well once again as a judge on the U.S. Court of Appeals for the Federal Circuit.

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

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

The question is, Will the Senate advise and consent to the nomination of

Evan Jonathan Wallach, of New York, to be United States Circuit Judge for the Federal Circuit?

Mr. GRASSLEY. I ask for the yeas and nays.

Is there a sufficient second? There appears to be.

The clerk will call the roll.

The assistant editor of the Daily Digest called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alabama (Mr. SESSIONS).

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

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

[Rollcall Vote No. 199 Ex.]

YEAS—99

Akaka	Franken	Merkley
Alexander	Gillibrand	Mikulski
Ayotte	Graham	Moran
Barrasso	Grassley	Murkowski
Baucus	Hagan	Murray
Begich	Harkin	Nelson (NE)
Bennet	Hatch	Nelson (FL)
Bingaman	Heller	Paul
Blumenthal	Hoeben	Portman
Blunt	Hutchison	Pryor
Boozman	Inhofe	Reed
Boxer	Inouye	Reid
Brown (MA)	Isakson	Risch
Brown (OH)	Johanns	Roberts
Burr	Johnson (SD)	Rockefeller
Cantwell	Johnson (WI)	Rubio
Cardin	Kerry	Sanders
Carper	Kirk	Schumer
Casey	Klobuchar	Shaheen
Chambliss	Kohl	Shelby
Coats	Kyl	Snowe
Coburn	Landrieu	Stabenow
Cochran	Lautenberg	Tester
Collins	Leahy	Thune
Conrad	Lee	Toomey
Coons	Levin	Udall (CO)
Corker	Lieberman	Udall (NM)
Cornyn	Lugar	Vitter
Crapo	Manchin	Warner
DeMint	McCain	Webb
Durbin	McCaskill	Whitehouse
Enzi	McConnell	Wicker
Feinstein	Menendez	Wyden

NOT VOTING—1

Sessions

The nomination was confirmed.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

RECESS

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

Thereupon, the Senate, at 12:45 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

3% WITHHOLDING REPEAL AND JOB CREATION ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will re-

sume consideration of the motion to proceed to H.R. 674, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to the bill (H.R. 674) to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KIRK. Mr. President, I ask unanimous consent to speak as in morning business.

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

IRAN

Mr. KIRK. Mr. President, I rise to talk about two entirely different subjects; first, on the subject of Iran, the subject of a critical International Atomic Energy Agency report that will be issued likely tomorrow.

Credible press reports on the United Nations document tell us an important thing. Remember, it was the IAEA that urged caution with regard to the weapons of mass destruction program in Iraq. The record shows that the IAEA was largely correct on its determination there. Based on that credibility, we should listen to the IAEA and what they say in this groundbreaking report.

Their report makes six very important conclusions according to credible press reports: No. 1, the Islamic Republic of Iran has used military people to procure dual-use nuclear material; No. 2, they have developed an undeclared nuclear material production line separate from their commitments under the Nuclear Non-Proliferation Treaty; No. 3, they have now acquired outside international information on the development of nuclear weapons; No. 4, they have begun work on an indigenous design for a nuclear weapon; and, No. 5, they are already substantially in excess of the 3-percent enrichment for uranium-235 necessary to run a nuclear reactor as they originally claimed.

The sixth conclusion, though, appears to be the most important. The International Atomic Energy Agency concludes they may have also begun work on a new payload for their Shahab-3 missile. This is a missile that largely comes from North Korea called the No Dong and is able to hit U.S. bases in the Persian Gulf and our allies in Israel. According to the reports on this U.N. document, it says the Shahab-3 payload has the correct mass for a nuclear weapon; it has a generator aboard the warhead that would be necessary to initiate a nuclear detonation; it is designed for an airburst to make that detonation most effective; the weapon has multiple detonators in it—I think this is a key conclusion because a conventional munition only requires one detonator, but a nuclear weapon requires multiple detonators; and this has it—it does not issue any

submunitions, all the warhead is contained in one critical mass; and the Iranians have now prepared a 400-meter test shaft likely for a nuclear test shot.

If this is not a smoking gun, I do not know what is. I do not know what the word for “smoking gun” in Farsi is, but clearly the United Nations, not known for speaking clearly on many topics, is now telling us one clear thing: the Islamic Republic of Iran is designing and moving toward building nuclear weapons.

If we look at their record, we will see the Islamic Republic of Iran has transferred nearly every one of its advanced munitions it currently owns to terrorist organizations, including antishipping cruise missiles, which the Iranians transferred to Hezbollah.

We have also known several dangerous—actually, dangerously weird—things going on in the Islamic Republic of Iran, such as sentencing an Iranian actress to 90 lashes for appearing in an Australian film simply on the crime of not having her head covered—luckily, because the International Campaign for Human Rights in Iran called attention to this, apparently that sentence may be in abeyance—or credible reports this weekend that the Islamic Republic of Iran, under President Ahmadinejad, has arrested 70 fashion designers for anti-Islamic activity.

What we know for a fact is that the Islamic Republic of Iran has been a state sponsor of terror, as certified by Presidents Carter, Reagan, Bush, Clinton, Bush 2, and President Obama under Secretary of State Clinton. We know they are the leading paymasters for Hezbollah and Hamas.

What we can see clearly from this report is that this year, or likely the year after, they will have nuclear weapons. I think it is quite likely they would then transfer those nuclear weapons directly to Hezbollah and Hamas. This is something we cannot allow to happen, which is why action in the Senate and in the executive branch should occur on collapsing the Central Bank of Iran. We already have 92 Senators who have agreed, even in these partisan times, to collapse the Central Bank of Iran. Ninety-two Senators have signed on to the Kirk-Schumer letter to call for this action. This action was also just recommended in an overwhelmingly bipartisan fashion in the House Foreign Affairs Committee under the leadership of Congressman BERMAN to recommend this also in the House. I think the administration—that has leaked several times to the New York Times that they have this under consideration—should move in this direction.

For those countries that substantially purchase oil from the Islamic Republic of Iran, we should work with our Saudi allies to make sure their needs are met so we can go ahead and collapse the Central Bank of Iran and the Iranian currency, especially in the wake of this report.

Remember, this is the government that, according to Attorney General