

that the Republican leadership is holding up qualified nominees. Let me just point out for the record that there were a number of qualified nominees of President Bush who weren't even given the courtesy of a hearing. For instance, John G. Roberts, Jr., nominated on January 27, 1992, for the vacancy left by the now Supreme Court Justice Clarence Thomas. Among his long list of accomplishments, I note, was that he was a former law clerk to the Chief Justice of the Supreme Court. He had worked at various high level positions at the Justice Department, including serving as Deputy Solicitor General of the United States. He was an outstanding lawyer and he wasn't even given the courtesy of a hearing.

Another fine nominee was Maureen Mahoney. Keep in mind, we have had some Senators take to the floor here and try to imply that because it has been difficult to get a certain woman nominee through from time to time, that there must be something wrong with the Judiciary Committee for not doing that. Well, take the fine nominee, Maureen Mahoney, nominated for the U.S. District Court in the Eastern District of Virginia on April 2, 1992. Like Mr. Roberts, she, too, was a well-respected litigator. She clerked for Chief Justice Rehnquist and also served as a deputy solicitor general of the United States. Neither of these exceptionally qualified nominees were able to get a hearing on their nomination.

I could go on and on. Keep in mind that we have 750 judges on the bench today, compared to in 1991-92 when we had considerably less judges at that particular time—711 and 716, compared to 750 today. Plus, in addition to the 750, we have a number of senior status judges—79 as I recall—who are hearing cases and continuing their work even though they have taken senior status. So there is no crisis.

Now, having said all of this, I would like to move these nominees who are qualified as fast as we can. I would like them to come up on the floor as fast as they can be brought up. Thus far, the majority leader has virtually brought up everybody we have brought out of the committee, except a couple, and they will be brought up in the near future. Margaret Morrow will have her vote in the Senate. I will announce right here and now that I will vote for her, even though I did have some qualms as a result of her first confirmation hearing and as a result of some of the things that she had said while President of the California Bar Association, and on other occasions during the earlier years. But I have found her to be qualified and I will support her. Undoubtedly, there will be some who will not, but she deserves to have her vote on the floor. I have been assured by the majority leader that she will have her vote on the floor. I intend to argue for and on her behalf.

I believe that with continued cooperation from the White House, in

consultation with Senators up here—keep in mind that this isn't a one-way street. Senators have a right to be concerned about lifetime-appointed judges serving within their areas, their States. Therefore, that is why the Senate has a noble and very important role in this confirmation process. I want to commend the current White House counsel, Charles Ruff for the work he is doing in meeting personally with Senators up here and trying to resolve their difficulties. I think he has made a lot of strides, and I think that is going to be helpful over the long run.

Mr. President, these are important matters. I do not believe they should be politicized. I think activist judges, whether they come from the right or left, are judges who ignore the law and just do whatever their little old visceral tendencies tell them to do. These are judges who act like superlegislatures from the bench who usurp the powers of the other two branches—coequal branches—of Government, the executive and legislative branches. These are judges who ignore the written law. These are judges who take their own political purposes to what the law should be. These are judges, a number of whom sit on the Ninth Circuit Court of Appeals, who have given me nothing but angst because of their activism. During this last year 28 of 29 cases on the Ninth Circuit Court of Appeals were reversed by the Supreme Court because of judicial activism.

Everybody knows that judicial activism is hard to define. But it is not hard to define when you look at some of those cases. Judges do have to try cases at first impression. And when they do, they do have to make decisions, and they have to split the baby, so to speak. But we are talking not about those cases. We are talking about judges who ignore the basic intents of the law, the basic languages of the law, who substitute their own policy preferences for what the law really is.

When we see judges like that, I tell them they are undermining the Federal judiciary, they are making my job as chairman of the Judiciary Committee much more difficult, and the job of the ranking member much more difficult, and they are doing wrong things.

It is important that this be brought to the attention of the American people because these judges are nominated by the President. They are confirmed for life. When they retire, they get full judgeship pay the rest of their lives. We need an independent judiciary in this country. There is no stronger voice for an independent judiciary than I. And we do need the lifetime tenure. But when judges ignore the basic laws and substitute their own policy preferences for what the law really is, they are undermining the Federal judiciary, and they are disgraces to the Federal judiciary.

Frankly, it is time that they wake up and realize that. It is embarrassing to the good judges throughout this coun-

try—manifestly embarrassing to them to have some of these judges who just think they are above the law; who think they are above the Constitution; who think they are above the other two coequal branches of Government.

Thank goodness there are not too many of them in the Federal judiciary. Thank good goodness we have people and a Senator willing to stand up and say, We have had enough. I happen to be one of them.

Mr. President, these are important issues. The Federal judiciary can determine what happens in this country for years to come. It is important that we have people of the utmost integrity and respect for the law and respect for the rule of law and respect for the role of judging on our Federal benches.

As long as I am on the Judiciary Committee, I am going to work as hard as I can to see that those are the kinds of people that we get there. I am not so sure it is that important whether they are liberal or conservative, if they will respect the role of judges and respect the rule of law. I have seen great liberal judges, and I have seen great conservative judges. And I have seen lousy ones in both categories as well.

I just suggest that they respect the role of judging. Judging generally has been pretty good.

UNANIMOUS CONSENT AGREEMENT—HOUSE JOINT RESOLUTION 94

Mr. HATCH. Mr. President, I ask unanimous consent that the majority leader, after consultation with the minority leader, may proceed to the consideration of House Joint Resolution 94, the continuing resolution, which will be received from the House.

I further ask unanimous consent that no amendments be in order to the resolution and that the Senate then immediately proceed to a vote on passage of the resolution with no intervening action or debate.

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

Mr. HATCH. I now ask unanimous consent that, notwithstanding the receipt of the continuing resolution, it be in order to ask for the yeas and nays at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

NATIVE AMERICAN PROGRAMS ACT AMENDMENTS OF 1997

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 57, S. 459.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 459) to amend the Native American Programs Act of 1974 to extend certain authorizations, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Programs Act Amendments of 1997".

SEC. 2. AUTHORIZATIONS OF CERTAIN APPROPRIATIONS UNDER THE NATIVE AMERICAN PROGRAMS ACT OF 1974.

Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) in subsection (a), by striking "for fiscal years 1992, 1993, 1994, and 1995." and inserting "for each of fiscal year 1997, 1998, 1999, and 2000.";

(2) in subsection (c), by striking "for each of the fiscal years 1992, 1993, 1994, 1995, and 1996," and inserting "for each of fiscal years 1997, 1998, 1999, and 2000."; and

(3) in subsection (e), by striking " \$2,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, 1996, and 1997." and inserting "such sums as may be necessary for each of fiscal years 1997, 1998, 1999, and 2000.".

SEC. 3. NATIVE HAWAIIAN REVOLVING LOAN FUND.

(a) IN GENERAL.—Section 803A of the Native American Programs Act of 1974 (42 U.S.C. 2991b-1) is amended—

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking "award grants" and inserting "award a grant"; and

(ii) by striking "use such grants to establish and carry out" and inserting "use that grant to carry out"; and

(B) in subparagraph (A), by inserting "or loan guarantees" after "make loans";

(2) subsection (b)—

(A) in paragraph (1), by striking "loans to a borrower" and inserting "a loan or loan guarantee to a borrower"; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking "Loans made" and inserting "Each loan or loan guarantee made";

(ii) in subparagraph (A), by striking "5 years" and inserting "7 years"; and

(iii) in subparagraph (B), by striking "that is 2 percentage" and all that follows through the end of the subparagraph and inserting "that does not exceed a rate equal to the sum of—

"(I) the most recently published prime rate (as published in the newspapers of general circulation in the State of Hawaii before the date on which the loan is made); and

"(II) 3 percentage points."; and

(3) in subsection (f)(1), by striking "for each of the fiscal years 1992, 1993, and 1994, \$1,000,000" and inserting "for the first full fiscal year beginning after the date of enactment of the Native American Programs Act Amendments of 1997, such sums as may be necessary".

Mr. HATCH. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at this point in the RECORD.

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

The committee amendment was agreed to.

The bill (S. 459), as amended, was passed.

ORDERS FOR TUESDAY, SEPTEMBER 30, 1997

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. on Tuesday, September 30. I

further ask that on Tuesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate resume consideration of the Coats amendment No. 1249 to the District of Columbia appropriations bill.

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

Mr. HATCH. Mr. President, I now ask unanimous consent that the Senate stand in recess on Tuesday from the hours of 12:30 to 2:15 p.m. for the weekly policy conferences to meet.

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

PROGRAM

Mr. HATCH. Tomorrow morning at 10 a.m. the Senate will begin 1 hour of debate prior to the cloture vote on the Coats amendment regarding school choice. Following that vote, the Senate will continue consideration of the D.C. appropriations bill with the hope of finishing action on that bill during Tuesday's session.

The Senate will also consider the continuing resolution tomorrow as well. Therefore, additional votes will occur.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:36 p.m., adjourned until Tuesday, September 30, 1997, at 10 a.m.