

learning and successful participation in the workplace, a first class system of transportation, and a financial structure with bipartisan support that addresses with political honesty funding requirements.

Virginia must create a competitive position in global markets in the new century with an unrestricted commitment to excellence in providing our citizens with the tools of prosperity in a world of intense competition.

JUDICIARY VACANCIES

Mr. HATCH. Mr. President, I wish to take just a few minutes on judges, because I want to make two basically important points on judges.

At the outset, first, the current vacancy levels are not the product of some alleged Republican stall on judges.

Second, the Senate's constitutional advise-and-consent responsibility should not be reduced to a mere numbers game.

At the end of the last session, we had 65 judge vacancies. Last year, we had 21 judges nominated. We put through 17. We would have put through four more except for Democratic objections to their own judges—not to the judges, but to putting them forward, because one Democrat was not getting the judges that he wanted.

Let me just elaborate for a minute or two on those two points.

Mr. President, this is not a numbers game. Let me make an important point, which is this. Federal judges should not be confirmed as part of a numbers game or to reduce the vacancy rate to a particular level.

While I plan to oversee a fair and principled confirmation process, as I always have, I want to emphasize that the primary criteria in this process is not how many vacancies need to be filled, but whether President Clinton's, or whoever the President is, whether their nominees are qualified to serve on the bench and will not, upon receiving their judicial commission, spend a lifetime, a career, rendering politically motivated activist decisions.

The Senate has an obligation to the American people to thoroughly review the records of all nominees it receives to ensure that they are capable and qualified to serve as Federal judges. These are lifetime appointments with lifetime full benefits after they retire. Frankly, the record of activism demonstrated by so many of the Clinton judges and nominees calls for more vigilance in reviewing these nominees.

The current vacancies are not the result of a Republican stall. I think that is another point that has been widely distorted in recent weeks. The argument is that the Republicans are somehow stalling these judges. The facts show rather clearly that the current vacancies are not the result of Republican stall tactics.

First of all, at the end of the last Congress there were 65 vacancies. Today there are 100, 74 of which have not even had a recommended nominee.

I have been here a long time, but I have never heard we had to confirm people who were not even nominated.

There are 26; and we now have put through 5. We have four more that we put out of the committee yesterday, who I believe will go through quite soon. And we will have another markup of judges perhaps a week after we get back.

Let me just make this point so that we can resolve some of these problems.

These vacancies were caused by a record level of resignations in the past few months.

During President Clinton's first 4 years, we confirmed 202 judges. That is a near record high and nearly one-quarter of the entire Federal bench.

By the close of last Congress, there were only 65 vacancies. This is virtually identical to the number of vacancies under the Democratic chairman in the previous Congress. The Department of Justice itself stated that this level of vacancies represents virtual full employment in the Federal courts. So last Congress we were more than fair to President Clinton in his judicial nominees. We reduced the vacancy level to the level which the Justice Department itself considers virtual full employment.

But since the election last fall, 35 judges have either resigned or taken senior status. That is a dramatic number in such a short period, which has led to the current level of 100 vacancies.

Now, current vacancy rates are not an unprecedented crisis. Let me just point that out by saying there has only been a 5 percent increase in the vacancy rate. Keep in mind that 63 vacancies, a vacancy rate just over 7 percent, is considered virtual full employment, and 100 vacancies is a vacancy rate just over 12 percent. How can a 5 percent rise in the vacancy rate convert "full employment" into a "crisis."

The Democratic Senate left a much higher vacancy rate under President Bush. But compare today's 100 vacancies to that under a Democratic Senate during President Bush's Presidency.

In May 1991—the same time we are at right now—there were 148 vacancies. That is during President Bush's tenure. In May of 1992, again in President Bush's tenure, there were 117 vacancies. So that 148 and 117, respectively, is more than we have right now.

Now, I find it interesting that at that time I do not recall reading a single article or watching a single interview on judicial vacancies. So, in short, I think it is quite unfair and, frankly, inaccurate to report that the Republican Congress has created a vacancy crisis in the courts.

Now, I might add that judicial emergencies simply mean that the seat has been unfilled for a certain period of time. In reality, though, many of them are far from emergencies. Indeed, of the 24 alleged judicial emergencies, the administration has not even put up a nominee for 11 of those seats. How do

you blame the Congress for that? As for the others, I think you will find a number of the relevant districts do not, in fact, have an overburdensome caseload, and, in fact, some of the senior judges are suggesting that we reexamine the number of judges in their area and reduce them because they do not need them. It costs at least \$1 million a year for every judge in this country, and there are well over 800.

All of this being said, I feel very strongly we must do our best to reduce the vacancies in the Federal courts. Frankly, there are limits to what we can do, especially with what the administration has done so far. The fact of the matter is that, excluding two brand new nominees whose paperwork we have not yet received and cannot process because we have not yet received it, there are only 26 nominees for these 100 vacancies, meaning 74 vacancies are without nominees. Of these 26, 8 have already had hearings and are either on the Senate floor or about to be reported out of committee. So we are moving on nominees, and we will continue to move.

The problem, however, is that many of the remaining 18 nominees who have not yet had committee action are in one way or another problematic or controversial. All but a few of them were carried over from the last Congress, and I can assure you that there is a reason why the Senate confirmed 202 other nominees but not them. If and when the administration sends us qualified, noncontroversial nominees, they will be processed fairly and promptly, and I am trying to process these controversial nominees to the extent that we can and certainly am trying to do so fairly and promptly.

Take Mr. Alan Gold from Florida, for example. He was nominated in February of this year. We completed his paperwork and review in March and April. He had a hearing 2 weeks ago and was reported out of the committee yesterday, just to give an illustration.

When the administration sends us problematic nominees, it takes much more time and it is much more difficult to process them, and the administration knows this. I think my colleagues on the other side know this. If all we are left with are judges whom we are not ready to move, I will not compromise our advise-and-consent constitutional function, I will not compromise it simply because the White House has not sent up qualified nominees. As I said at the outset, the Senate's advise-and-consent function should not be reduced to a mere numbers game. The confirmation of an individual to serve for life as a Federal judge is a very serious matter and it should be treated as such.

Now, we have had a lot of complaining and yelling and screaming about this, but to be honest with you, we are much better than a number of prior Congresses where Democrats had control of the Judiciary Committee and when they had control of the floor as

well. President Clinton has not been mistreated. He has not been treated unfairly, and his nominees have not been mistreated or treated unfairly. In fact, we have yet to have a nominee who has been rejected on the floor during the Clinton administration, although I felt that at least two of them should have been.

Mr. LEAHY. Mr. President, I hope the distinguished chairman of the Senate Judiciary Committee can stay on the floor just for a moment because I intend to refer to some of the things he has said.

To begin with, the distinguished chairman is a close personal friend of mine, not the least of which I find that, as a Grateful Dead fan of long standing, I enjoy his gospel music. So we do have some areas that join us.

I must take exception to some of the remarks he has made about Federal judges. He mentioned that none had been rejected on the floor. Well, of course they have. We have had the average of one a month. At this rate, with 100 vacancies, it is zero population growth in the Federal judiciary. President Clinton will not be in office long enough nor will the next two Presidents, to see all these vacancies filled—not if you do one a month.

When he says none have been rejected on the floor, that is because these are extraordinarily well-qualified people and they are going to be voted for on this floor. In fact, even Merrick Garland they held up for so long. When Judge Garland came here, some people—for whatever reasons, ideological or whatever—voted against him, but not one person suggested he was not extraordinarily well qualified; in fact, one of the best qualified judges we have seen in years. In fact, even some who voted against him commended his qualifications. So it became just a political, partisan thing.

I suspect that the 27 judges that are being held in limbo or in the prison of the Senate Judiciary Committee, if they had a fair vote on this floor, would all be confirmed overwhelmingly because Senators would not want to have to go back to their State and try to explain to people why, other than for purely partisan motives, they voted against some of these judges.

So, how do you defeat the judges? You make sure they never come forward. I will give you an example—Margaret Morrow. Margaret Morrow came before our committee last year. She had to go through all the usual and appropriate confirmation hearings, and she was voted out of the committee unanimously, but somehow they made sure she never came to the floor for a vote.

So this year Margaret Morrow was brought back again and told she was going to be put in her place. All the men who were candidates for the Federal judiciary were brought up first and she was told to sit there—although she had been here once before and unanimously confirmed, she was told to sit

there in the back of the room waiting for the others to be confirmed or to be heard.

Now, I keep bringing this issue up at the Judiciary Committee meeting, and I am told there are no objections to her, but somehow she is never brought forward to be voted on. I keep saying, if Senators want to vote against her, stand up, have the guts to stand up in the bright sunshine and say how they would vote on her, but nobody does, nobody does.

She was asked such questions as how she votes. There were over 100 initial questions before it became too embarrassing, and then how did she vote on initiatives in California. I raise the question, and I hope that all Senators, Republicans and Democrats, would agree with me on this, that the Senate demeans itself if it starts asking people how they voted in the secrecy of the voting booth. I would never allow somebody to ask me how I voted unless I really wanted to tell how I voted in the secrecy of the voting booth. The distinguished Senator from West Virginia would not allow that. The distinguished Senator from Utah would not allow that. And I suspect the Senator who asked the question would not allow it of himself. She is supported by the Republican mayor of Los Angeles. She is supported by significant Republicans and Democrats in California. She was the president of the California Bar Association, the first woman ever elected to that position—the president of the Los Angeles Bar Association—but somehow she does not come on to the floor.

I suspect that if she was brought for a vote, she would win overwhelmingly. She would win with 90 votes in the Senate, at least, but apparently she loses with one vote of an anonymous Senator who hides behind a veil of secrecy and will not tell us why he or she is holding her up.

Now, is this full employment of the Federal judiciary? Not according to the Chief Justice of the United States, William Rehnquist. Chief Justice Rehnquist says the situation is bleak—not full employment, but bleak.

We have emergencies existing. The ninth circuit has a quarter to a third of all judges missing. Will the White House have more judges coming up? Of course they will. But do not blame the White House; blame the U.S. Senate. We have had more vacations and recesses in the Senate than we have had judges. We ought to at least do the job we are paid to do.

Of course, I agree with the distinguished Senator from Utah that we should scrutinize all judges. We can do that, but do it, and then get on with our work. We get paid plenty. We ought to do it.

What I see happening, Mr. President, when you have a Congressman from Texas who says that judges should be impeached because he, the Congressman, happens to disagree with their decisions—Mr. President, I read the Con-

stitution. I have my own copy, supplied to me by the distinguished senior Senator from West Virginia, and I say to my friend from West Virginia that I looked through that copy and I found grounds of impeachment—high crimes and misdemeanors. I did not find grounds of impeachment that you annoyed a Congressman from Texas or anywhere else.

I do not think that was ever contemplated by the Founders, I say to my good friend. But this is the kind of ridiculous thing we have, all of which is aimed at going against the independence of the Federal judiciary.

We had somebody else who proposed the Congress have the ability to stand up and vote to override any judicial decision. What does that do to the independence and what does it have to do with our workload? Here it is May 23, and we are finally passing the budget that the law requires us to pass on April 15. Can you imagine if we had to then vote on several thousand judicial decisions each year? This is what we are hearing. Again, a conservative Republican Justice, Justice Scalia, says this is going too far. I agree with him.

As I said earlier to the distinguished Republican leader—I was on the floor—I hope that he would work to see this does not continue. Majority leaders of the Senate, the 22 years I have been here, Senators Mansfield, BYRD, Baker, Dole and Mitchell, all great leaders, all leaders who said there are certain things where partisanship has to end. The President of the United States has the authority under the Constitution to appoint judges. We advise and consent. We are not the appointers of judges. He is. We can recommend, we can advise and we can consent. But once he has appointed them, then if we do not like them, vote them down. But do not take on the pride of 100 Senators around here.

I suspect, regarding the press accounts, that the distinguished Senator from Utah has certain restraints from within his own caucus. I understand that. But I urge this. We are going to go out of session now for 10 days or so, a week, whatever it is. I urge, as I have before, that the distinguished majority leader, the distinguished Democratic leader, the distinguished Senator from Utah and I sit down and try to find if there is a way to start moving these judges from the Senate, and from the Senate end how we can move faster. If people do not like them, vote against them, but do not hold them in limbo; and then I suggest we meet with the President of the United States.

Mr. HATCH. Mr. President, let me say that the Senator from Vermont is a dear friend of mine. There is no question about that. We enjoy working together.

But I think the points that I have made are very valid points. The administration has taken up to 618 days to name each nominee. That is really twice the time that historically it has taken in prior administrations in the

White House. At an average of 618 days for each vacancy President Clinton has taken to fill, according to my calculations—I could be wrong—but it would take more than 125 years to fill all 74 vacancies.

So, you can play this numbers game. All I am saying is I dedicate myself to try to do the best I can to get these judges through. I appreciate the help my colleague gives me in that regard. I think, as we get more of these nominees up here, we will get more of them to the floor.

But I appreciate his remarks. I just do not quite agree with them, that is all.

With that, I yield the floor.

Mr. LEAHY. Mr. President, I will continue to work with my good friend from Utah. In the meantime, I will send him my Grateful Dead tapes, and I will listen to his music and we will both be in a better mood.

Thank you.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I ask unanimous consent to proceed for 10 minutes as if in morning business.

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

TRUSTING AMERICANS SUBJECT TO EMERGING SECURITIES FRAUD

Ms. COLLINS. Mr. President, as the chairman of the Permanent Subcommittee on Investigations, I want to take this opportunity to highlight a growing problem with securities fraud in this country—a problem which affects thousands of American families who are now investing their hard earned savings in a booming stock market. The problem involves the fraudulent manipulation of the stocks of small companies in scams which can literally wipe out investors who place their trust in unscrupulous brokers and stock promoters.

Fraud in the sale of small company stocks has been increasing at an alarming rate. In the typical case, unscrupulous brokerage firms, often operating through intermediaries, purchase large positions in a company which is worthless or of very limited value and then drive its price higher through manipulation. They do this by aggressively cold calling thousands of unsuspecting individuals, often inexperienced in investing, and persuading them to purchase the company's stock by greatly exaggerating its financial prospects. The inevitable effect of this massive sales campaign is to push the price higher, at which point the brokerage firm dumps its shares, leaving the public holding investments which rapidly become worthless.

According to published reports and court proceedings, these schemes often utilize other illegal or unethical practices, including: The dissemination of false information on which investors rely, the employment by brokerage firms of persons with criminal records,

as well as the use of unlicensed individuals whose only activity is ostensibly to prospect for customers but who often participate in making sales for which they are paid under the table; and the bribing of brokers to assist in the manipulation by recommending the stock to their trusting customers.

These securities fraud schemes have been uncovered in recent prosecutions and criminal investigations. At least four grand juries around the country are investigating small-stock manipulation—what may be the financial crime of the 1990's, just as insider trading was the financial crime of the 1980's. Indeed, according to published articles, a Federal grand jury in Los Angeles has even investigated a Federal prosecutor suspected of engaging in securities fraud. And last year, an FBI sting operation in New York City resulted in the arrest of 46 individuals for this type of activity.

In recent years, the soaring stock market has attracted millions of new investors, many of them hard working families trying to save for the future or elderly Americans trying to expand their retirement savings. It is understandable that these individuals, confronted with the prospect of astronomical tuition bills for their children or escalating medical costs for themselves, fall prey to sales pitches promising high returns in what are supposed to be the glamour companies of the future.

Overall, it is estimated that one in three American households have some of their assets invested in the stock market. Most do not have the time or the resources to carefully scrutinize stock offerings to determine which ones are fraudulent, instead putting their faith in brokers, who, because they are licensed by the Government, the public believes it has reason to trust.

Mr. President, some years ago I served as the State of Maine's Commissioner of the Department of Professional and Financial Regulation, and one of the responsibilities of my department was the protection of investors in my State. While that experience taught me that America has the most dynamic and healthiest capital markets in the world, it also taught me that there is no shortage of con artists and fraudulent schemes. What was true then unfortunately appears to be true today, and regrettably, there is evidence that the problem may be more widespread.

While the vast majority of those who work in our securities industry are honest, we must be continually vigilant in safeguarding the integrity of our markets. We must remain committed to combating what appears to be a new wave of securities fraud, involving the intense marketing and subsequent manipulation of the stock offerings of small companies, many with high-tech sounding names. These offerings—when pushed by overly aggressive and fraudulent marketing pitches to

average American families and the elderly—present a ripe opportunity to lull the investing public into believing the stock is about to take off. Too often, these stocks do not soar to the heavens but rather fail to the ground.

This fraud must be fought on a variety of fronts. The regulators must continue to enforce existing regulations and to watch for illegal activity. The public must be more careful in investing in the stock market. And the Congress must—and will—closely investigate this growing problem of securities fraud.

As chairman of the Senate Permanent Subcommittee on Investigations, Mr. President, I am concerned about this fraud in the micro-capital markets—about this manipulation of small company stocks by Wall Street bandits. The subcommittee has a long and proud tradition of investigating schemes which rip off innocent consumers and taint the reputations of those who play by the rules. This investigative tradition will continue under my leadership. With more and more Americans entering the stock market each year, the Permanent Subcommittee on Investigations will be looking closely at these matters, investigating how these stock manipulation schemes victimize American investors and how we can arrest this emerging securities fraud.

I look forward to working with my colleagues on the Governmental Affairs Committee and in the Senate to protect the public from unscrupulous operators who would prey on hard working Americans seeking to participate in the American Dream through investment in the stock market. The expanding economic opportunities presented by a booming stock market should not benefit just the most wealthy Americans, but should benefit average American families as well.

As the chairman of the Permanent Subcommittee on Investigations, I promise you that we will vigorously investigate those who abuse the trust of their fellow citizens seeking to invest their hard earned savings. I further pledge that we will be especially relentless in our efforts to expose schemes which exploit the elderly. During my tenure, the subcommittee will use its investigative authority to shine the light of truth on those who operate in the shadowy fringes of America's capital markets.

I thank the Senate for its attention.

I yield the floor.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. I thank the Chair.

(The remarks of Mr. ENZI pertaining to the introduction of S. 802 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Thank you, Mr. President.