of the [Act] with respect to the acquisition by Iran of C–802 model cruise missiles.'' Despite this unanimous expression by the Senate of the need to enforce the law, the Administration has refused to take action in this case.

There are many more examples of Chinese proliferation and the Administration's failure to enforce current laws in this area that provide the rationale for the Thompson amendment. In the interest of time, I will not describe them all, but will simply make the point that the Thompson amendment would have helped to combat this deadly trade by making it clear to China that it would have faced economic penalties from the U.S. if it continued to proliferate.

Mr. President, I would just say in conclusion that trade with China is important, and I intend to vote for the PNTR bill. But I believe it is imperative that we not forget these important national security issues once the debate on PNTR is completed. The challenge before us is to deal with China in a way that protects America's national security, promotes free trade, demonstrates our support for our democratic ally Taiwan, and improves human rights in China. This is a tough job, but one that I am sure all Senators agree is too important to ignore.

JUDICIAL NOMINEES

Mr. KYL. Mr. President, I rise to discuss an important matter. As I begin, I am reminded of a statement my mother used to make. Actually, I recall my grandmother making this statement.

The statement is to ''cut off your nose to spite your face.'' I have found out that actually that phrase can be traced back to the late 1700s, when our Constitution was created. It essentially means doing something senseless, frequently out of spite, and which frequently ends up hurting the actor. The idea is that you are not happy with your face so you are going to cut off your nose. We all understand that that doesn't exactly solve the problem and, in the end, creates a bigger problem than the one with which you started.

That phrase is applicable to something our friends of the minority are doing with respect to Federal judges. We have heard and have been subjected to a weekly dose of expressions of disappointment by members of the minority that the Senate has not confirmed more of President Clinton's judicial nominees. The chairman of the Judiciary Committee recently had to respond to that criticism because it had escalated to such a point that it demanded a response.

In fact, not only were members of the Judiciary Committee being critical of the Republican chairman and the Republican Senate for not confirming more judges, but the President and Members of the House of Representatives chimed in with very, as Senator HATCH called it, ''reckless and unfounded'' accusations.

For example, one Democratic House Member was quoted as saying that the Senate:

> . . . has made the judiciary an exclusive club that closes the door to women and minorities. . . . Its determinations have been made on the basis of racism and sexism, plain and simple.

Other Democrats have argued that there is a judicial vacancy crisis and that ''scores of vacancies continue to plague our Federal courts.'' That is a statement of a prominent member of the Senate Judiciary Committee.

In the face of comments such as this, Senator HATCH had to respond, and respond he did. He pointed out that the claims are false, both the claims of the inordinate number of judges being held, allegedly, and also the charge of racism.

The Senate considers judicial nominees on the basis of merit, regardless of race or gender. As Chairman HATCH pointed out, minority and female nominees are confirmed in nearly identical proportion to their white male counterparts. The Republican Senate is confirming nominees at a reasonable rate, about the same rate as has occurred in the past.

From statistics I have from the Judiciary Committee, there are currently 64 vacancies out of the 852-member Federal judiciary, which yields a vacancy rates of about 7.5 percent. A good comparison is the year 1994—by the way, at the end of a Democratically-controlled, the 103rd Congress—when there were 63 judicial vacancies, 1 less, yielding a vacancy rate of 7.4 percent. By comparison, at the end of the Bush administration, when Democrats controlled the Senate, the vacancy rate stood at 12 percent.

It is possible to find statistics to prove about anything, but the fact is, as the chairman of the committee pointed out, this Congress is confirming judges of the Clinton administration at about the same rate as past Congresses, and certainly the vacancy rate is not as bad as it had been at previous times.

The important point is that Democrats, members of the minority, who are critical of Republicans for not confirming the nominees, need to be careful of this charge because it is they who are now refusing to confirm President Clinton's nominees to the Federal district court. There are currently four nominees who are ready to be brought to the full Senate floor for confirmation. Indeed, all four of these nominees were presented to the minority for their approval. There is no objection on the Republican side.

The minority leader, speaking for Members of the Senate minority, objected to the Senate's consideration of confirmation of these four Clinton nominees to the Federal district court, the only four candidates on whom the Senate can vote. None of the other nominees has gone through the committee and is therefore ready for us to act.

These are the four nominees currently on the Executive Calendar: Judge Susan Ritchie Bolton, Mary Murguia, James Teilborg, and Michael Reagan. The first three are nominees from Arizona. They were all nominated on July 21, 2000, by President Clinton. Michael Reagan of Illinois is the other nominee. He was nominated on May 12, 2000.

I chaired the hearing for these four nominees on July 25, 2000. They are all qualified nominees. I recommended them all to my colleagues on the Judiciary Committee for confirmation. Indeed, they were approved by the Judiciary Committee on July 27, 2000, and sent to the floor for consideration. They were supposed to be confirmed before the August recess. When an unrelated negotiation between Leader LOTT and Minority Leader DASCHLE broke down and reached an impasse, floor action on these nominees was postponed until this month, when we returned from the August recess. That is when the minority leader rejected the majority leader's request that these four be considered by the full Senate.

It doesn't matter to me whether they are confirmed by unanimous consent or by a vote, but in any event, these are the four on whom we can act. They ought to be acted on, and I believe all should be approved.

With respect to the three in Arizona in particular, I note that last year Congress created nine new Federal district court judgeships—four for Florida, three for Arizona, and two for Nevada. There was a very specific reason for this action. There is a huge caseload in these three States. The judges are falling further and further behind, primarily in the State of Arizona; I believe also in Florida. This is due to the number of criminal prosecutions for illegal drugs, alien smuggling, and related cases. All of the new judgeships for Nevada have been confirmed, and three of the four judgeships for Florida have been confirmed. None of the judgeships for Arizona has been confirmed.

It is important that these nominees of President Clinton be confirmed by the Senate. They are critical to handling the caseload in the State of Arizona.

Here is where the old phrase of my mother and grandmother comes into play: cutting off your nose to spite your face. Because some of the members of the minority party wish we could confirm even more judges, they are holding up the confirmation of these judges. There is nothing against the qualifications of any of the four. It is just that if they can't have everything their way, then, by golly, nobody is going to get anything.

It is President Clinton who has nominated these four candidates. It is not somebody from Arizona, though Democratic Congressman ED PASTOR and Senator MCCAIN and I strongly support these three nominees.

One, Mary Murguia, is a career Federal prosecutor. She is currently at the

U.S. Department of Justice as the executive director of the Attorneys General Association. She would be, incidentally, the first Latino ever to be confirmed for the U.S. district court from the State of Arizona.

Jim Teilborg is a lifelong trial attorney with enormous experience in courts and would—I think everyone recognizes—make a tremendous Federal judge.

Judge Susan Bolton is one of the most respected members of the Arizona Superior Court, the trial court at the State court level, one of the most respected judges in the entire State. In fact, I have received comments from many lawyers who have said: We think your three nominees from Arizona are fantastic. We just wish Judge Bolton didn't have to leave because she is so important to the judiciary at the State level.

Judge Michael Regan from Illinois, likewise, has very high qualifications. The point is this: These are Clinton administration nominees. They are needed to fill important vacancies in the Federal district court. Members of the minority have complained incessantly all year long that we need more judges and that the Senate needs to confirm the President's nominees, and they complain when the Senate has taken more time than they thought was warranted to confirm these judges. So the Senate Judiciary Committee acts to put these judges before the full Senate, and what happens? Members of the minority object. They won't let the Senate even vote on these four nominees. That is what I call cutting off your nose to spite your face.

It is obstruction tactics; it is dealmaking at its worst. This is what people object to when they look at the Federal Government. It doesn't treat these individuals as human beings whose lives and careers are on hold. Incidentally, it has happened before. This is not the first time members of the minority have held up the nomination of a Democratic nominee by the Democratic President. In 1997, Democrats blocked the nomination of Barry Silverman to the Ninth Circuit Court of Appeals. He had to wait until the following year to be confirmed. Again, there was a dustup over a nominee from Illinois, as I recall, and the point was: If we can't get everything we want, you are not going to get anything you want.

It is not only me and not only the people of Arizona; it is also the will of the President of the United States that is being thwarted. It is not as if partisan politics were involved with respect to the people being nominated because they are Republicans, Democrats, or Independents. In fact, obviously, the majority are Democrats. So you have a Democratic President nominating mostly Democratic candidates for the court, and the Democratic minority is holding them up.

One of our distinguished colleagues on the Judiciary Committee, the distinguished ranking member, Senator LEAHY, recently said on the floor, ''We cannot afford to stop or slow down judicial nominations.'' I agree with Senator LEAHY on this point. I hope that he and Senator DASCHLE and the other Senators who have an interest in this important subject will continue to support the confirmations of judges as long as we can and at least support the confirmations of those who the Senate can act on because they are the only ones who have been cleared to this point and, in any event, will recognize the irony in their criticism on the Senate floor for not confirming judges, when it is their action and their action alone that is preventing the confirmations of these four nominations to the Federal district bench. It is time for action. I hope my colleagues will quickly clear these four nominees for confirmation.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, my understanding is that we have 10 minutes in morning business.

The PRESIDING OFFICER. Morning business is scheduled to conclude at 2 p.m.

Mr. MURKOWSKI. I ask unanimous consent that I might be allowed 15 minutes as in morning business.

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

COURT OF APPEALS DECISION ON NUCLEAR WASTE

Mr. MURKOWSKI. Mr. President, let me draw your attention to a very significant event that occurred last week which involved the nuclear utilities companies in this country prevailing in the spent fuel claims case. Now, to many, this might not seem to have great significance. Those of us on the Energy Committee have gone through a long and somewhat tedious process to try to address the federal government's obligation to encourage the Congress, specifically the Senate, to reach a decision on how we are going to dispose of our high-level nuclear waste, with a recognition that almost 20 percent of the power generated in this country comes from nuclear power. As a consequence of that, and the inability of the Government to fulfill its contractual commitment to take the waste in 1998, the industry in itself is, you might say, choking on the pileup of nuclear waste that is in temporary sites around reactors throughout the country.

Evidently, the administration does not value the sanctity of a contractual relationship very highly, because the ratepayers, over an extended period of years—several decades—have paid over 17 billion dollars into a fund which the Federal Government has managed, and that fund was specifically designed to permanently take the waste from the utility companies that generate power from nuclear energy.

The August 31, 2000 decision was highlighted in The Energy Daily. The U.S. Court of Appeals for the Federal Circuit ruled that the power companies are free to seek damages against the Energy Department for its failure to take responsibility for spent nuclear fuel. Undoubtedly, this will ''prompt dozens of new lawsuits seeking billions of dollars in claims against the Government,'' industry attorneys indicated last Friday.

Who is the Government? The Government is the taxpayers, Mr. President. As a consequence, the inability of the administration to meet its obligation under a commitment—a binding contract—results in the taxpayers being exposed to billions of dollars in damages.

The article says:

The U.S. Court of Appeals for the Federal Circuit handed the nuclear industry a sweeping victory Thursday when it rejected a government motion to dismiss a suit brought by utility owners of three nuclear power plants. The government claimed the utilities must first exhaust all administrative remedies available through the DOE before seeking monetary damages in the U.S. Court of Federal Claims.

The decision means that nuclear utilities can return to court and will get a chance to prove their damages—to ask the court to determine the amount of damages the government must pay for DOE's failure to begin storing the spent fuel on Jan. 1, 1998.

Congress set that date for the federal government to take responsibility for spent nuclear fuel in the Nuclear Waste Policy Act of 1982, which requires DOE to store the roughly 40,000 metric tons of waste generated and now stored at more than 100 U.S. nuclear plants.

Some of those plants, I might add, are no longer active. They weren't designed for long-term, indefinite storage.

Estimates of the potential damages faced by the government as the result of last week's decision vary widely.

An analysis performed this year for the Nuclear Energy Institute showed the figure could be as high as $50 billion—costs that will be borne by the taxpayers—but that number is based on a worst-case assumption that the government will never fulfill its obligation, and the utilities' spent fuel will never be stored in a proposed federal level-high waste depository at Yucca Mountain, Nev. [where the Government has already expended over $6 billion.]

The idea of the facility at Yucca Mountain in Nevada was to act as a permanent repository for the high-level waste.

NEI General Counsel Robert Bishop told The Energy Daily Friday that the dozen or so utilities already having filed lawsuits against DOE allege some $5.4 billion in damages resulting from the government's failure to take the spent fuel.

So we are seeing the suits filed at this early time.

Bishop acknowledged, however, that the figure could be much higher if, as expected, utilities that thus far have been reluctant to sue the government take advantage of the Thursday decision and pursue their claims in court.

''You are going to see a lot of utilities deciding to do whatever they believe is in their and their customers' best interest.''

''Some may choose to work with DOE as PECO did. Others may decide that it is in