them to hold up if they can and not allow a larger debate on those questions and not stop the debate on something that needs to be dealt with in the next 24 hours before we recess for the year.

The President has urged us to do this. Every single industry group I know of beyond the insurance industry—the private sector—is calling on us to deal with this issue. Even the Consumer Federation has different ideas but understands our failure to act could create a serious problem. For us to not even try I think would be a huge mistake.

I urge before we recess that we make an effort, starting early tomorrow, to give this body time to hear some of the various ideas my colleagues may have. I may disagree with them on those ideas, but I am prepared to spend the time necessary tomorrow to engage in debate on those ideas, resolve them one way or another, and send this bill from this Chamber to conference with the one adopted in the House and resolve it, so we can finish the business of giving the President a proposal that will avoid the kinds of problems the Senator from New York has very properly described.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

JUDICIAL NOMINATIONS

Mr. HATCH. Mr. President, I understand some of my colleagues were on the floor today trying to make some points about judges, and I would like to set the record straight because I think they protest too much. There is just far too much protesting and far too much misinformation being given out about judges by some in this body.

Having been intimately involved in trying to get as many judges through as I could over the last 7 years, I have to say I find some of the comments that were made were a little unctuous and perhaps to some people who have been involved and have worked so hard to do a good job a little bit irritating and maybe offensive.

As Congress nears the end of its current session, we are beginning to see the end result of the systematic and calculated effort by some Senate Democrats to confirm the absolute minimum number of President Bush's judicial nominees they believe will be acceptable to the American public.

Some of the Senate Democrats want us to believe they have done everything that can be expected because they have confirmed as many judges during President Bush's first year in office as were confirmed in President Clinton's first year 8 years ago. What they are not telling the public is the Senate has purposefully ignored more judicial nominees than in any other President's first year in office in recent history.

Thirty-two of President Bush's nominees have been prohibited from even having a hearing, the first step in the Senate's constitutionally-required process of advice and consent.

Some Senate Democrats want to use an inaccurate measure of performance focused on the end result of 8 years ago rather than exposing the percentage of their work they left uncompleted this year. The percentage is a much more appropriate gauge for the simple reason our current President Bush sent many more judicial nominations to the Senate than the previous President did in his first year.

So let us look at the percentages. The Senate has exercised its advice and consent duty on only 21 percent of President Bush's circuit nominees this year. The other 79 percent of our work remains unfinished. This is despite the fact that President Bush sent his first batch of 11 circuit nominations to the Senate on May 9 of this year, which gave the Judiciary Committee plenty of time to act on them. Even so, only 3 of those 11 have been confirmed. A significant number of those have the highest possible rating from the American Bar Association. Even so, only three, as I say, have been confirmed. President Clinton, on the other hand, did not send his first circuit nominations to the Senate until August 1993, but still saw 60 percent of his circuit court nominees confirmed before the Senate adjourned in November of 1993.

The Senate's record on overall judicial nominations is not much better than our record on circuit nominees. Since some of my colleagues on the other side of the aisle are so fond of comparing their record to the first year of the Clinton and first Bush administrations, let us see how they stack up. President Clinton had nominated 32 judges by October 31 of his first year in office. Eighty-eight percent of those, or 28 nominees, were confirmed by the time Congress went out of session in 1993. The first President Bush had nominated 18 judges by October 31, 1989, of which 89 percent, 16 nominees, were confirmed by the time Congress recessed at the end of that year. In contrast, as of today, the current President Bush has nominated 66 judges and only 27 have been confirmed, a mere 41 percent. (I hope that tomorrow we will confirm the five who are presently on the Senate calendar.)

The importance of this percentage is that the Senate has done only 41 percent of its job this year. In other words, nearly 60 percent of judicial nominees are somewhere in the Senate's black hole. We will conclude our work by leaving nearly 100 vacancies in the judicial branch, which means more than 11 percent of all Federal courtrooms in this country are presided over by an empty chair.

Some of my Democratic colleagues recently asserted the present vacancy crisis is the result of Republican inaction on judicial nominees during the Clinton administration. Incredibly, some have asserted that the vacancy rate increased 60 percent under Republican control of the Senate. That is a wild exaggeration. The truth is that, during the 6 years when I was chairman of the judiciary committee, the vacancy rate was never above 8 percent at the end of any session of Congress.

In December 1995, there were 63 vacancies in the Federal courts, which is a vacancy rate of 7.4 percent. In December 1996, after Congress had been out of session for nearly 2 months during which it could not immediately fill any vacancies, there were 75 openings in the Federal judiciary. December 1997, 81 vacancies; December 1998, only 54 vacancies; December 1999, 68 vacancies, and last year, only 67 vacancies. All tolled, the average number of vacancies under my chairmanship in the month of December is 68—a vacancy rate of 8 percent.

Contrast this to 2001: We are about to adjourn with nearly 100 vacancies, a rate of over 11 percent. This year will indeed go down in history as a black hole—and a black mark—for the failure to confirm judicial nominees.

Of course, trying to shift the blame for this present vacancy crisis ignores the end result of how Republicans treated President Clinton's judicial nominees. During the Clinton Administration, the Senate confirmed 377 judicial nominees. This number is only 5 short of the all-time record of 382 judges confirmed during the Reagan administration. And keep in mind, for 6 years of the Reagan administration the Senate was controlled by the President's party. But for 6 of President Clinton's 8 years, the Senate was controlled by Republicans. So the Republican—controlled Senate confirmed essentially the same number of judges for Clinton as it did for Reagan. We have not heard a single Democratic Senator acknowledge this fact because it proves that the Republicans treated Democratic nominees fairly. The fact is, contrary to the assertion that Republicans held up President Clinton's judicial nominees, the Republicans who controlled the Senate during 6 years of the Clinton administration put a near record number of judges on the bench. What is more, those 377 confirmed judges represent nearly 80 percent of all of President Clinton's judicial nominees.

As for the pace of moving nominees, it is worth noting that 20 Clinton judicial nominees received a hearing within 2 weeks of their nomination. Thirty-four Clinton judicial nominees received a hearing within 3 weeks of their nomination, and 66 received a hearing within a month of their nomination.

In contrast to the Republican Senate, the present Democratic-controlled Senate has only contributed to the vacancy crisis. In the first 4 months of

Democratic control this year, only six Federal judges were confirmed. At several hearings, the Judiciary Committee considered only one or two judges at a time. The Senate has been behind the curve ever since, and the Federal judiciary continues to suffer for it. The number of judicial emergencies has increased by 17 in the last year.

Now I must pause a moment to talk about the Tenth Circuit since it encompasses my home state of Utah. Several of my Democratic colleagues remarked that the present leadership held the first hearing for a Tenth Circuit nominee since 1995. The implication, of course, is that the Republican-controlled Senate failed to approve Clinton nominees for the Tenth Circuit.

A closer examination of the facts reveals that there were no Tenth Circuit nominees for most of the 6 years the Democrats cite. After the confirmation of three Tenth Circuit Clinton nominees in 1995, there was not another Tenth Circuit nominee until 1999, and that nomination was subsequently withdrawn. The next Clinton Tenth Circuit nominee was not nominated until just before August recess in 2000, which left the Senate little time to act on the nomination given the dynamics of last year's election.

So the suggestion that the Republicans deliberately failed to act on Clinton nominees for the Tenth Circuit for 6 years is inaccurate at best and downright misleading at worst.

Unfortunately, the same cannot be said of the Judiciary Committee's present leadership. We have an eminently well qualified candidate from Utah for the 10th Circuit, Michael McConnell, who has been awaiting a hearing for more than 7 months. He received the highest rating given by the American Bar Association and is considered one of the true legal intellects in the country today.

Not long ago, I talked with one of the leading law deans in the country. He is a very liberal Democrat. I asked him about Michael McConnell. He knows him intimately. He said: I have met two absolute legal geniuses in my lifetime and Michael McConnell is one of them.

In addition, both Timothy Tymkovich of Colorado and Terrence O'Brien of Wyoming are awaiting hearings on their nominations to the Tenth Circuit. So, despite the recent confirmation of one Tenth Circuit nominee, there is still substantial work left undone in the Tenth Circuit.

The Senate's constitutional obligation to provide President Bush advice and consent on his judicial nominations is not a game, as some of my Democratic colleagues seem to believe. This is not football, or baseball, or basketball, where the whole point is to beat the other team. Neither the Senate nor the American public scores a victory when some Senate Democrats execute a deliberate strategy of ignoring more than half of President Bush's picks for the Federal Judiciary.

Any excuse for not moving a nominee that hinges on his or her supposed ideology is just that—an excuse. If we start imposing an ideological litmus test, then we will not get people of substance to sit on the Federal benches in this country. If we start denying hearings to nominees simply because they are personally pro-abortion or pro-life, it would be a tremendous mistake.

We should confirm the President's nominees where we can. Sometimes there are reasons why we cannot. I understand that. I have been there. I have had people on both sides of this floor mad at me, and I was doing everything I could to support President Clinton's nominees through the Senate process. I don't expect the current Judiciary Committee chairman to have an easy time, either. He is a friend. But the fact of the matter is, I don't think the job is getting done.

There are myriad reasons why political ideology has not been, and is not, an appropriate measure of judicial qualifications. A nominee's personal opinions are largely irrelevant so long as a nominee can set those opinions aside and follow the law fairly and impartially as a judge. I am very concerned that the statements made today by some of my Democratic colleagues indicate a renewed intention to subject judicial nominees to a political litmus test, instead of focusing on their intellectual capacity, integrity, temperament, health, and willingness to follow precedent.

Despite the unfortunate decisions made this year, I believe there is some room for hope in 2002. The same results-oriented strategy that led the Judiciary Committee this year to match President Clinton's first year, should lead the committee to equal his second year, as well. During President Clinton's second year in office, the Senate confirmed 100 of his judicial nominees. The American people should join me in expecting Senate Democrats to do the same for President Bush. In fact, I think we should take this year's systematic and calculated performance as a pledge that the Senate will confirm at least 100 of President Bush's judicial nominees in 2002.

Mr. President, there is another fact that I think ought to be brought up. That is, when the first President Bush left office, there were around 67 vacancies and 54 nominations pending that were never acted upon. But on election day of 2000, only about 42 Clinton nominees were left pending, several of whom were sent here so late in the year that there was no way the Judiciary Committee could have processed them.

I tried to do my best as Judiciary Committee chairman, and I don't think anybody on the other side has a right to complain. Admittedly, there were a few judges that we just couldn't get through, but it wasn't for lack of trying. There are some Senators in each party who may not want to see many of the other party's judges get through, and they make it tough. But those Members are very much in the minority. I think most Members in both parties would like to see a better job done.

Now, I have great hope we will do a better job next year. It is an absolute disgrace to allow 79 percent of President Bush's circuit court nominees to languish. In particular, I will mention three of them.

Michael McConnell is one of the greatest minds in the field of law today. He has all kinds of Democrat support, but one or more single-issue special interest groups are mouthing off against him. He has wide bipartisan support and everybody that knows him knows he would make a great circuit court of appeals judge. I would like to see him on the Tenth Circuit Court of Appeals because I think he would help that court a great deal.

Another one is Miguel Estrada. Here is one of the leading minorities in the country today, an immigrant who graduated from Columbia University and Harvard Law School. But the Senate leadership has been sitting on his nomination for 7 months, preventing him from having a hearing. He received the American Bar Association's highest rating, which some Democrats have touted as the gold standard for nominees, but still cannot get the time of day from the Judiciary Committee.

John Roberts is another excellent nominee. He is considered one of the greatest appellate lawyers in the country today. My friends on the other side left him languishing as a nominee of the first President Bush, back in 1992. Here he is, languishing for another 7 months, not even being given a chance to have a vote up or down.

Now let me just say a few words about two executive branch nominees who also have been mistreated. One is Eugene Scalia, the nominee for Solicitor of Labor. Listening to his critics, you might think the plan is to turn OSHA over to Eugene Scalia, who disagrees with the efficacy of some of the rules on ergonomics. But he will have nothing to do with that. And besides, both Houses rejected those rules by a majority vote. The Solicitor of Labor basically has no power other than to issue legal opinions, and Scalia is one of the brightest young legal minds in the country today.

I suggested last week that Mr. Scalia's nomination is being stopped for two reasons—at least these are the ones that keep cropping up. And I hope these are not the true reasons why any Senator would stop an executive branch nominee. I would be tremendously disappointed at our Senate if they were the true reasons.

The first is that he is a pro-life Catholic. This is not a persuasive argument for voting against Eugene Scalia's nomination. It is offensive to me if anyone in this body would actually vote against someone for that reason. The fact that he is a pro-life Catholic has nothing to do with whether or not he can do a good job as Solicitor of Labor. Everybody knows he is

an excellent lawyer. He has said he will abide by the law, whatever it is. Whether he agrees or disagrees with it, he will enforce the law. What more can you ask of a nominee? And he is the President's choice for this position. He deserves to have a vote.

If people feel so strongly against him that they want to vote him down, let them vote against him. But at least let this man, and the President, have a vote on this nomination.

The second reason that Eugene Scalia's nomination is being stopped, is that some may hold it against him that his father happens to be Justice Antonin Scalia on the U.S. Supreme Court. I hope nobody in this body would hold it against a son, the fact that they might disagree with the father. I do not have to speak in favor of Antonin Scalia. He is one of the greatest men in this country. He is a strong, morally upright, decent, honorable, intellectually sound, brilliant jurist—just the type we ought to have in the Federal courts. The fact that he may be more conservative than some in this body is irrelevant.

But even if there were some good reason to criticize Justice Scalia, there is no basis at all for using such a criticism against his son, who is a decent, honorable, intelligent, intellectual, brilliant young attorney who deserves the opportunity to serve his Government, and who has already said that as Solicitor of Labor he will abide by the law whether he agrees with it or not. Knowing how honorable he is, I know he will do exactly that.

The second executive branch nomination I want to mention is Joseph Schmitz for Inspector General of the Department of Defense. I happen to know a lot about him; he is one of the brightest people I have ever met. He is not even getting a committee vote. At least Mr. Scalia got a vote in committee—he received a majority vote in his favor in the HELP Committee. But Mr. Schmitz isn't even getting a vote in committee. That is no way to treat a nominee, or the President who nominated him.

Frankly, these jobs—solicitor and inspector general—are not politically sensitive positions. And both of these men I know personally to be honest, decent, honorable men. They deserve votes in this body. If they lose, then I can live with that result. I do not believe they will lose.

The purposeful delay on all of these nominations bother me a great deal, and I hope we do something about it. If we can't do anything before the end of the current session, then I hope we will do it shortly after we get back.

I will continue to do my very best to work as closely as I can with Senator LEAHY. We are friends, and I respect him. I want to support him in every way. But some of the comments I have heard in this Chamber today are nothing more than a distortion of the facts, a distortion of the numbers, and a distortion of the record. I personally resent it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ADMINISTRATIVE SIMPLIFICATION COMPLIANCE ACT

Mr. BINGAMAN. Mr. President, on December 12, 2001, the Senate passed the Administrative Simplification Compliance Act, by unanimous consent. As the title states, this is a bill about compliance with the ''Administrative Simplification Act'' and not a proposal to delay enforcement of it.

This bill permits healthcare organizations, health plans, providers and clearinghouses, which cannot meet the current deadline for compliance with the transactions and code sets rule, to seek and obtain a one-year delay. Such flexibility was necessary due to the complexity and novel nature of the changes mandated under the Administrative Simplification Act. At the same time, certain provisions were built into the rule to allay concerns that entitles that request the delay may merely continue to avoid preparing for compliance. The first of the provisions designed to provide compliance impetus is the requirement to submit a plan no later than October 16, 2002, stating, among other things, how the covered entity will come into compliance by October 16, 2003.

These plans must include: (1) an analysis reflecting the extent to which, and the reasons, why, the person is not in compliance; (2) a budget, schedule, work plan, and implementation strategy for achieving compliance; (3) whether the person plans to use or might use a contractor or other vendor to assist the person in achieving compliance; and (4) a timeframe for testing that begins not later than April 15, 2003.

I am concerned that there will be a year in which some covered entities are using compliant standard transactions, as prescribed by the Administrative Simplification Act, and others who are not compliant and sought the delay according to them by H.R. 3323. For those in compliance, it is important that they are not penalized for using a compliant standard transaction format, as prescribed by the Administrative Simplification Act, after the original compliance date of October 15, 2002. That is, transactions should not be rejected, burdened, or penalized with additional costs, for being in conformity to the standard transaction format.

In order to avoid burdening complying health care entities, those entities seeking delay should also set forth how they will accept and not unduly burden conforming transactions from compliant health care entities between October 16, 2002, and October 16, 2003.

I look forward to working with my colleagues to ensure that Administrative Simplification Act accomplishes what it was set out to do, which is to save money for covered entities on transactions costs, provided administrative efficiency, and protect the privacy of personally identifiable health information.

HOLD ON S. 1803

Mr. GRASSLEY. Mr. President, in keeping with my policy on public disclosure of holds, today I placed a hold on further action on S. 1803, legislation reported out by the Senate Foreign Relations Committee to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961.

I am particularly concerned with Section 602 of this legislation.

Section 602(a) expresses the sense of Congress that the United States Trade Representative should seek to ensure that Free Trade Agreements are accompanied by specific commitments relating to nonproliferation and export controls.

Section 602(b) specifically directs the United States Trade Representative to ensure that any Free Trade Agreement with Singapore contains or is accompanied by a variety of specific nonproliferation and export control commitments.

Both of these matters—what sort of commitments Free Trade Agreements should contain, and specific negotiating instructions to USTR relating to the United States-Singapore FTA negotiations—are matters under the jurisdiction of the Senate Finance Committee.

Apart from the fact that Section 602 deals with matters that pertain to the jurisdiction of the Finance Committee, I have an additional practical concern as well.

According to the Trade Act of 1974, the United States Trade Representative is required to consult with and report to Members of the Senate Finance Committee and the House Committee on Ways and Means on the status of trade negotiations. This includes ongoing negotiations, like the US-Singapore FTA talks, and future FTAs in general.

If enacted into law, Section 602 would likely result in a confusing situation in which the Senate Foreign Relations Committee is advancing negotiating instructions to USTR on behalf of Congress, even though the oversight responsibility for such negotiations lies with the Finance Committee. USTR would have to consult with the Finance Committee about its implementation of negotiating instructions developed by the Foreign Relations Committee, instructions Finance Committee Members had no role in developing, and are not familiar with.

As far as I know, no Member of the Finance Committee has even seen Section 602 before.