

waiver of chapter 77 of title 5 relating to appeals. This would make veterans go to an agency management-operated process to challenge anti-veteran personnel actions by the same agency management. Under current law, veterans who believe that they have been denied a position or have been subject to a "designer" Reduction-In-Force, RIF, action in violation of veterans' preference requirements can challenge such wrongful actions through the Merit Systems Protection Board or through a union grievance procedure. This will no longer be possible under the House bill. The Committee's bill would have preserved MSPB review of veterans' preference complaints. Ironically, as we are in the midst of a war on terrorism and have authorized a war against Iraq, the Administration is weakening veterans' preference rights. This is fundamentally wrong.

Twelfth, the House proposal and the Governmental Affairs Committee-reported bill include provisions protecting the confidential sharing of critical infrastructure information. With cyber attacks on the rise, government and industry leaders have been seeking a way to facilitate the sharing of information related to cyber vulnerabilities and attacks. Sharing such information is important because 85 percent of the Nation's infrastructure is controlled by private utility, telecommunications, or other similar companies. Despite the need to facilitate information sharing, I question the extent to which such information will be protected and the impact of such protections on environmental and public health laws.

In general, the owners and operators of critical infrastructure are concerned about the type and scope of information they are being asked to submit to the government. This data deals with vulnerabilities, incidents, and remedies which, if made available to business competitors or to the general public, could compromise their competitive position, expose them to liability, disclose sensitive information to terrorists and others who might wish to disrupt the function of their infrastructure, or harm their public relations.

However, current law provides adequate protection to the private sector for disclosing this type of information to the Federal Government. Nonetheless, industry has expressed its concern over non-binding case law that could be overturned. As such, the Governmental Affairs Committee bill provided a narrow exception to the Freedom of Information Act which closely follows current law. This provision was designed to facilitate the sharing of information with the Federal Government, while at the same time providing citizens with necessary information on public health and environmental issues. The Committee bill was careful not to provide an inadvertent safe harbor for those who violate Federal health and safety statutes.

For these reasons, I believe that the Governmental Affairs Committee's legis-

lation offered a more effective approach to guarding homeland security than the proposal advocated by the President who recently stated that "our job—our government's greatest responsibility is to protect the American people. "I agree with the President, but I do not agree that by voting for the President's flawed proposal we will be adequately protecting the American people.

Mr. JEFFORDS. Mr. President, I would like to commend Senator CORZINE for his efforts to address the serious issue of chemical site security. The Chemical Security Act, S. 1602, which I cosponsored, would require "high priority" facilities to improve security and reduce hazards. The bipartisan and strong support for this issue was demonstrated last July when the bill unanimously passed the Senate Environment and Public Works Committee.

Across the country, thousands of industrial facilities use dangerous chemicals in amounts that could endanger nearby communities if the facilities were attacked by terrorists. According to the Environmental Protection Agency's Risk Management Planning program, there are 123 facilities where a release of chemicals could threaten more than 1 million people. There are also more than 700 facilities from which a chemical release could threaten more than 100,000 residential neighbors. Yet there is no Federal security standard for chemical facilities, no Federal guidelines on facility proximity to neighboring communities, and no Federal agency overseeing the operations and safety of these facilities.

This bill is not intended to address chemical accidents. The Clean Air Act already provides existing authority. However, a review of the chemical accident data provides clear insight into the dangers associated with chemical releases from these facilities. Federal data suggests that in 1998 there were almost 50,000 incidents—fires, spills and explosions—over 100 deaths, and nearly 5,000 injuries, related to chemical industrial accidents in the United States. Some analysts suggest that for each catastrophic chemical accident that causes a fatality, there are 300 recordable incidents and 30,000 near misses. One estimate suggests that U.S. chemical accidents cost about \$15 billion a year.

In 1999, Congress required the Department of Justice to issue, within 3 years, a report to Congress on the vulnerability of chemical facilities to criminal and terrorist activity. For over a year, the Senate Environment and Public Works Committee has been asking for this report. Beyond a very thin and useless preliminary draft, the administration has not complied with this requirement of the Clean Air Act amendments. The Justice Department claims that funding constraints have impacted their work. This excuse is completely unacceptable, as is the administration's delay in addressing

what may be this Nation's biggest terrorist vulnerability. Three years ago, Congress recognized the potential risks to our Nation's chemical security. Not 1 more year or month should pass with this issue unresolved.

Press reports highlight the public's frustration. In September, Newsweek reported a failing grade to the Federal Government in protecting chemical plants and other hazardous materials. I believe the article accurately described the forces blocking action: "industry lobbyists and infighting among a multitude of government agencies trying to defend their turf have combined to hold (Governor) Ridge's office and the Environmental Protection Agency at bay."

I ask my colleague to step beyond bureaucratic delays and special interest pressures to think of the families that could be impacted by our inaction here today. We must act on this issue as soon as possible.

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

The PRESIDING OFFICER (Mr. SCHUMER). The clerk will call the roll.

The assistant 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.

Mr. REID. Mr. President, I extend my appreciation to the Senator from Iowa who has other things to do, but he has agreed to be here for a few minutes.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 788, 789, 851, 911, 922, 926, 1031, 1032, 1033, 1034, 1071 through 1135, 1147 through 1176; and all nominations placed on the Secretary's desk. I further ask that the nominations be confirmed en bloc, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and any statements be printed in the appropriate place in the RECORD, and the Senate then resume legislative session, with the preceding all occurring with no intervening action or debate.

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

The nominations considered and confirmed en bloc are as follows:

#### NATIONAL LABOR RELATIONS BOARD

Rene Acosta, of Virginia, to be a Member of the National Labor Relations Board for the remainder of the term expiring August 27, 2003.

Dennis P. Walsh, of Maryland, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2004.

#### DEPARTMENT OF ENERGY

Kyle E. McSlarrow, of Virginia, to be Deputy Secretary of Energy.

## THE JUDICIARY

John M. Rogers, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

## DEPARTMENT OF AGRICULTURE

Phyllis K. Fong, of Maryland, to be Inspector General, Department of Agriculture.

## FEDERAL COMMUNICATIONS COMMISSION

Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission for the remainder of the term expiring June 30, 2003.

## DEPARTMENT OF THE TREASURY

Wayne Abernathy, of Virginia, to be an Assistant Secretary of the Treasury.

## FEDERAL MARITIME COMMISSION

Rebecca Dye, of North Carolina, to be a Federal Maritime Commissioner for the term expiring June 30, 2005.

## DEPARTMENT OF TRANSPORTATION

Roger P. Nober, of Maryland, to be a Member of the Surface Transportation Board for a term expiring December 31, 2005.

## REFORM BOARD (AMTRAK)

David McQueen Laney, of Texas, to be a Member of the Reform Board (Amtrak) for a term of five years.

## THE JUDICIARY

Stanley R. Chesler, of New Jersey, to be United States District Judge for the District of New Jersey.

Rosemary M. Collyer, of Maryland, to be United States District Judge for the District of Columbia.

Mark E. Fuller, of Alabama, to be United States District Judge for the Middle District of Alabama.

Daniel L. Hovland, of North Dakota, to be United States District Judge for the District of North Dakota.

Kent A. Jordan, of Delaware, to be United States District Judge for the District of Delaware.

James E. Kinkeade, of Texas, to be United States District Judge for the Northern District of Texas.

Robert G. Klausner, of California, to be United States District Judge for the Central District of California.

Robert B. Kugler, of New Jersey, to be United States District Judge for the District of New Jersey.

Ronald B. Leighton, of Washington, to be United States District Judge for the Western District of Washington.

Jose L. Linares, of New Jersey, to be United States District Judge for the District of New Jersey.

Alia M. Ludlum, of Texas, to be United States District Judge for the Western District of Texas.

William J. Martini, of New Jersey, to be United States District Judge for the District of New Jersey.

Thomas W. Phillips, of Tennessee, to be United States District Judge for the Eastern District of Tennessee.

Linda R. Reade, of Iowa, to be United States District Judge for the Northern District of Iowa.

William E. Smith, of Rhode Island, to be United States District Judge for District of Rhode Island.

Jeffrey S. White, of California, to be United States District Judge for the Northern District of California.

Freda L. Wolfson, of New Jersey, to be United States District Judge for District of New Jersey.

## EXPORT-IMPORT BANK OF THE UNITED STATES

Philip Merrill, of Maryland, to be President of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 2005.

## DEPARTMENT OF STATE

Kim R. Holmes, of Maryland, to be an Assistant Secretary of State (International Organizations).

Maura Ann Harty, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State (Consular Affairs).

Ellen R. Sauerbrey, of Maryland, for the rank of Ambassador during her tenure of service as the Representative of the United States of America on the Commission on the Status of Women of the Economic and Social Council of the United Nations.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

Quannah Crossland Stamps, of Virginia, to be Commissioner of the Administration for Native Americans, Department of Health and Human Services.

## NATIONAL INDIAN GAMING COMMISSION

Philip N. Hogen, of South Dakota, to be Chairman of the National Indian Gaming Commission for the term of three years.

## FARM CREDIT ADMINISTRATION

Nancy C. Pellett, of Iowa, to be a Member of the Farm Credit Administration Board, Farm Credit Administration for a term expiring May 31, 2008.

## DEPARTMENT OF DEFENSE

Otis Webb Brawley, Jr., of Georgia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

## NATIONAL LABOR RELATIONS BOARD

Robert J. Battista, of Michigan, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2007.

Wilma B. Liebman, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2006.

Peter Schaumber, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2005.

## NATIONAL COUNCIL ON DISABILITY

Joel Kahn, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

Patricia Pound, of Texas, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

Linda Wetters, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

David Gelernter, of Connecticut, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

## NATIONAL MUSEUM SERVICES BOARD

A. Wilson Greene, of Virginia, to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2002.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2007.

Maria Mercedes Guillemard, of Puerto Rico, to be a Member of the National Museum Services Board for a term expiring December 6, 2005.

Nancy S. Dwight, of New Hampshire, to be a Member of the National Museum Services Board for a term expiring December 6, 2005.

Peter Hero, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

Thomas E. Lorentzen, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

## NATIONAL INSTITUTE FOR LITERACY

Juan R. Olivarez, of Michigan, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

James M. Stephens, of Virginia, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 2005.

## BARRY GOLDWATER SCHOLARSHIP &amp; EXCELLENCE IN EDUCATION FOUNDATION

Peggy Goldwater-Clay, of California, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring June 5, 2006.

## NATIONAL INSTITUTE FOR LITERACY

Carol C. Gambill, of Tennessee, to be a Member of the National Institute for Literacy Advisory Board for a term of three years.

## NATIONAL MUSEUM SERVICES BOARD

Beth Walkup, of Arizona, to be a Member of the National Museum Services Board for a term expiring December 6, 2003.

## DEPARTMENT OF EDUCATION

John Portman Higgins, of Virginia, to be Inspector General, Department of Education.

## DEPARTMENT OF STATE

J. Cofer Black, of Virginia, to be Coordinator for Counterterrorism, with the rank and status of Ambassador at Large.

## INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Irene B. Brooks, of Pennsylvania, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

## BROADCASTING BOARD OF GOVERNORS

Blanquita Walsh Cullum, of Virginia, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2005.

## DEPARTMENT OF STATE

Peter DeShazo, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during tenure of service as Deputy Permanent Representative of the United States of America to the Organization of American States.

David N. Greenlee, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Bolivia.

John Randle Hamilton, of North Carolina, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guatemala.

## OVERSEAS PRIVATE INVESTMENT CORPORATION

Collister Johnson, Jr., of Virginia, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 2004.

## DEPARTMENT OF STATE

John F. Keane, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Paraguay.

## OVERSEAS PRIVATE INVESTMENT CORPORATION

John L. Morrison, of Minnesota, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 2004.

## INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Allen I. Olson, of Minnesota, to be a Commissioner on the part of the United States

on the International Joint Commission, United States and Canada.

#### FOREIGN SERVICE

PN2230 Foreign Service nominations (152) beginning William Joseph Burns, and ending Michael L. Young, which nominations were received by the Senate and appeared in the Congressional Record of October 8, 2002

PN2231 Foreign Service nominations (144) beginning Jon Christopher Karber, and ending Peter Fernandez, which nominations were received by the Senate and appeared in the Congressional Record of October 8, 2002

#### NOMINATION OF JOHN M. ROGERS

Mr. LEAHY. Madam President, last night, the Senate voted to confirm the nomination of John Rogers who is nominated to the U.S. Court of Appeals for the Sixth Circuit. By confirming this nomination, we are trying to move forward in providing help to the Sixth Circuit. Earlier this year, we held a hearing for Judge Julia Gibbons to a seat on the Sixth Circuit, who was confirmed by the Senate on July 29, 2002 by a vote of 95 to 0. With last night's vote, the Democratic-led Senate confirmed the 15th judge to our Federal Courts of Appeal and our 98th judicial nominee since the change in Senate majority in July 2001. I have placed a separate statement in the RECORD on the occasion of confirming that many of this President's judicial nominees in just 16 months.

Republicans often say that almost half of the seats on the Sixth Circuit are vacant but what they fail to acknowledge is that most of those vacancies arose during the Clinton Administration and before the change in majority last summer. None, zero, not one of the Clinton nominees to those current vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership. With the confirmation of Professor Rogers, we have reduced the number of vacancies on that court to six, but four of those remaining lack home-State consent due to the President's failure to address the legitimate concerns of Senators in that circuit whose nominees were blocked by Republicans during the period of Republican control of the Senate.

The Sixth Circuit vacancies are a prime and unfortunate legacy of the past partisan obstructionist practices under Republican leadership. Vacancies on the Sixth Circuit were perpetuated during the last several years of the Clinton administration when the Republican majority refused to hold hearings on the nominations of Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus to vacancies in the Sixth Circuit.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year. Judge White's nomination may have set an unfortunate record.

Her nomination was pending without a hearing for more over 4 years—51 months. She was first nominated in January 1997 and renominated and renominated through March of last year when President Bush chose to withdraw her nomination. Under Republican control, the committee averaged hearings on only about eight Courts of Appeals nominees a year and, in 2000, held only five hearings on Courts of Appeals nominees all year.

In contrast, Professor Rogers was the fifteenth Court of Appeals nominee of President Bush to receive a hearing by the committee in less than a year since the reorganization of the Senate Judiciary Committee. In 16 months we held hearings on 20 circuit court nominations. Professor Rogers was being treated much better than Kathleen McCree Lewis, a distinguished African American lawyer from a prestigious Michigan law firm. She never had a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001.

Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000. While Professor Markus' nomination was pending, his confirmation was supported by individuals of every political stripe, including 14 past presidents of the Ohio State Bar Association and more than 80 Ohio law school deans and professors.

Others who supported Professor Markus include prominent Ohio Republicans, including Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRYCE, and Congressman DAVID HOBSON, the National District Attorneys Association, and virtually every major newspaper in the state.

In his testimony to the Senate in May, Professor Markus summarized his experience as a federal judicial nominee, demonstrating how the "history regarding the current vacancy backlog is being obscured by some." Here are some of things he said:

On February 9, 2000, I was the President's first judicial nominee in that calendar year. And then the waiting began. . . .

At the time my nomination was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. . . . No 6th circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judiciary Committee hearing, there was no circuit with more nominees than the 6th Circuit.

With high vacancies already impacting the 6th Circuit's performance, and more vacancies on the way, why, then, did my nomination expire without even a hearing? To their credit, Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me.

Over and over again they told me two things: (1) There will be no more confirmations to the 6th Circuit during the Clinton

Administration[.] (2) This has nothing to do with you; don't take it personally it doesn't matter who the nominee is, what credentials they may have or what support they may have—see item number 1. . . . The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

As Professor Markus identified, some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on the consensus nominees pending before the Senate. Some were unwilling to move forward, knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now so many vacancies on the Sixth Circuit.

Had Republicans not blocked President Clinton's nominees to this court, if the three Democratic nominees had been confirmed and President Bush appointed the judges to the other vacancies on the Sixth Circuit, that court would be almost evenly balanced between judges appointed by Republicans and Democrats. That is what Republican obstruction was designed to avoid, balance. The same is true of a number of other circuits, with Republicans benefitting from their obstructionist practices of the preceding six and a half years. This combined with President Bush's refusal to consult with Democratic Senators about these matters is particularly troubling.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations.

Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations. The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The Chief Judge noted that, with four vacancies—the four vacancies that arose in the Clinton administration the Sixth Circuit "is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court." He predicted: "By the time the next President is inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them."

However, no Sixth Circuit hearings were held in the last three full years of the Clinton administration—almost his