us on all these many occasions at which we enjoy their presence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. BAUCUS. What is the business of the Senate?

The PRESIDING OFFICER. S. 517 is the pending business.

Mr. BAUCUS. Madam President, I ask unanimous consent that there be a time limitation of 1 hour equally divided between myself and Senator GRASSLEY for debate on the Finance Committee energy tax amendment; that no amendments be in order to my amendment except a second-degree amendment by Senator GRASSLEY; that at the conclusion or yielding back of the time, the Senate vote in relation to Senator GRASSLEY's second-degree amendment and to my Finance Committee amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Reserving the right to object, I supported this tax section that Senator BAUCUS is trying to add to the energy bill at this time when we had it in the Finance Committee. Obviously, there are some things in there that I would prefer not be in there. But we had an overwhelming vote out of the Finance Committee in support of this package.

An energy policy that does not include a tax section is not a complete policy. We have to have some incentives for these hybrid cell vehicles and to try to get marginal wells back in production, to encourage biomass, to do everything we can, along with the policy that is included in this bill, to also encourage more energy production and more energy conservation through the Tax Code.

I support this. I will be glad to work with Senator BAUCUS to see that we get it included in the Senate package or certainly in the conference when a conference is completed. We have to do that.

But at this time, we do have an objection from our side of the aisle. And on behalf of a Senator who has a tax provision in which he is very interested, I am constrained to object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Montana.

Mr. BAUCUS. Madam President, I hear the distinguished Senator from Mississippi. I very much understand the reasons for his objection. I deeply appreciate his statement in support of the Finance Committee title that we hope to offer to this bill.

The provisions in the Finance Committee title total roughly $15 to $16 billion over 10 years. The Senate hopefully will pass the Senate-passed version of tax incentives. It will be incentives for production, conventional production, renewables, unconventional production, for conservation. The House passed a tax title to their energy bill which totals about $30 billion.

I fully agree with the distinguished Senator that the Finance Committee provisions, which will help wean us away from OPEC by providing incentives on matters that I suggested, are vitally important. And I hope—in fact, I expect—that the Senate, before it passes an energy bill, will also include these provisions because they are such an integral and vital part of the bill.

I thank all concerned, particularly my good friend from Mississippi.

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

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

The Senator from Nevada is recognized.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Daschle/Bingaman substitute amendment No. 2917 for Calendar No. 65, S. 517, a bill to authorize funding for the Department of Energy and for other purposes:

Jeff Bingaman, Jean Carnahan, Edward Kennedy, Pattie Murray, Mary Landrieu, Byron L. Dorgan, Robert Torricelli, Bill Nelson, John Breaux, Tom Carper, Tim Johnson, Hillary R. Clinton, Jon Corzine, John Rockefeller, Daniel Inouye, Max Baucus, Harry Reid, and Maria Cantwell.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to a period for morning business, with Senators permitted to speak therein for not to exceed 5 minutes each.

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

DEPARTMENT OF LABOR'S ERGONOMICS ANNOUNCEMENT

Mr. DASCHLE. Madam President, since President Bush signed into law a provision to overturn the ergonomics rule, over 1.8 million workers have suffered ergonomic injuries. At that time Secretary Chao promised ''to pursue a comprehensive approach to ergonomics.'' However, now more than a year later, the Department of Labor has unveiled a plan that ultimately falls short of the substantive protections needed to protect America's workers.

In response, Senator JOHN BREAUX and others have introduced a bill that would require that the Department of Labor promulgate a new rule on ergonomics within 2 years.

I am deeply concerned that the administration continues to build on its record of putting special interests above working Americans. I believe that Senator BREAUX's bill is an important measure that clarifies that workers deserve real protections, not more studies and voluntary guidelines.

Unfortunately, the administration's late announcement fails to provide workers adequate protections. The administration's plan states an ''intent'' to develop voluntary guidelines for selected industries. Senator BREAUX's bill will ensure that the administration provides real protections and not hollow promises.

STATUS OF JUDICIAL CONFIRMATIONS

Mr. HATCH. Madam President, I would like to respond to some comments made yesterday on the topic of judicial confirmations. I had no intention of bringing up this topic today, but now I find myself with no choice but to again set the record straight with respect to the comments my colleague made earlier yesterday.

First, I would like to put my remarks in context. I began this Session of the 107th Congress by praising the way that Chairman LEAHY and the Senate's Democratic leader had begun to handle judicial nominations. One of the reasons I did so was that I had detected the possibility that the Judiciary Committee may be headed in a new direction as we began a new Session. I sensed a chance that, after more than eight months of Democratic control, the leaders might stop steering their course by staring at the rear-view mirror, and would begin to look forward through the windshield at the work ahead. I thought that they might begin to sense the American people's frustration at the Senate's stonewalling of President Bush's priorities—especially his selections for the judiciary. Obviously, now that we are in the eleventh month of Democratic control, my optimism has become tarnished not only by the continuing extremely slow pace of confirmations and the blatant mistreatment of Judge Pickering, but also by the kind of comments we heard this morning that actually attempt to persuade the American people that the Senate's record is acceptable.

I want to correct a couple distortions of the record and explain what is really going on in the Judiciary Committee.

My colleague began his comments with the assertion that the Democrats have only been in charge of the Judiciary Committee since the end of July rather than the beginning of June—

which somehow adds up to 9 months. This particular exercise in make believe is apparently very important for some of my colleagues to repeat over and over. But the fact is—as everyone in the Senate knows—that Democrats took charge of the Senate on June 5, not at the end of July. Considering that it is now the middle of April, we are now in the eleventh month of Democratic control.

Why is this important? Playing make-believe that the month of June didn't exist last year helps some of my colleagues explain away the fact that they failed to hold any confirmation hearings during that entire month. There is no basis for the underlying assertion that the lack of an organizational resolution prevented the Judiciary Committee from doing so. It certainly didn't stop 9 other Senate Committees from holding 16 confirmation hearings for 44 nominees during that same month. And it did not prevent the Judiciary Committee from holding five hearings in three weeks on a variety of issues other than pending nominations.

Of course, the month-of-June distortion is simply part of the larger charade of pretending that the current judicial vacancy crisis has less to do with the last 11 months of foot dragging than with the Committee's work between the years 1994 and 2000. The fact is that, at the close of the 106th Congress, there were only 67 vacancies in the federal judiciary. In the space of one Democratic-controlled congressional session last year, that number shot up to nearly 100, where it remains today. The broader picture shows that the Senate confirmed essentially the same number of judges for President Clinton (377) as it did for President Reagan (382), which proves bipartisan fairness—especially when you consider that both Presidents has six years of Republican control in the Senate.

So, how did we go from 67 vacancies at the end of the Clinton Administration to nearly 100 today? There can be only one answer: The current pace of hearings and confirmations is simply not keeping up with the increase in vacancies. We are moving so slowly that we are making no forward progress. President Bush nominated 66 highly qualified individuals to fill judicial vacancies last year. But in the first four months of Democratic control of the Senate last year, only 6 federal judges were confirmed. At several hearings, the Judiciary Committee considered only one or two judges at a time. The Committee voted on only 6 of 29 circuit court nominees in 2001, a rate of 21%, leaving 23 of them without any action at all. In fact, eight of the first eleven judges that President Bush nominated on May 9 of last year still have not had a hearing—despite being pending for 344 days as of today.

It is time for this Senate to examine the real situation in the Judiciary Committee, rather than listen to more inventive ways of distorting it. We have lots of work to do. There are 96 vacancies in the Federal judiciary—a vacancy rate of more than 11.2 percent—and we have 53 nominees pending—plus 4 nominees for the Court of Federal Claims. Twenty of the pending nominees are for circuit court positions, yet the Senate has confirmed only 2 circuit judges this session. This is despite a crisis of 30 vacancies pending in the circuit courts nationwide—virtually the same number of vacancies pending when the Democrats took control of the Senate in June of last year.

These numbers beg the question: If the Judiciary Committee is not making any progress on the judicial vacancy crisis, What is happening in the Judiciary Committee? What is the Committee doing in lieu of confirming President Bush's nominees?

Well, the judicial confirmation process appears to be falling into the hands of some extreme-left special-interest groups whose political purposes are served by launching invidious attacks on the good people President Bush has nominated to serve as judges.

We all know too well what happened to Judge Pickering, who was a decent, honorable man who is clearly qualified to be a judge on the Fifth Circuit Court of Appeals. So I won't recount that very unfortunate situation. But I would like to warn everyone that the stoves of the special interest groups are readying to boil up an attack on Judge Brooks Smith of Pennsylvania who had a hearing nearly two months ago but still has had no vote in the Judiciary Committee.

If you are waiting to hear that some profound issue has been raised about a complicated or important legal issue, I am sorry to disappoint you. The fact is that Judge Smith has a very distinguished record as a Federal judge for nearly 14 years, and no one has questioned his ability or competence. So what is the great issue that may well be endangering his nomination—you might ask? Well, believe it or not, some are trying to make hay out of the fact that Judge Smith used to be a member of a small family-oriented fishing club—like hundreds that exist from Vermont to Wisconsin to North Carolina to Utah, that happens to limit membership to men.

Let me note at the outset that Judge Smith's nomination is supported by the Women's Bar Association of Western Pennsylvania and the local Domestic Violence Board in Pennsylvania. The people who know him best are the ones who support him the most.

It is also important to recognize that the Judiciary Committee, in 1990, and the Judicial Conference, in 1992, each made clear that Judges or nominees can belong to single-gender clubs so long as the club exhibits certain attributes of privacy first articulated by Justice William Brennan for the Supreme Court in *Roberts v. Jaycees*.

In *Roberts*, Justice Brennan—the great liberal patriarch of American jurisprudence—first articulated the right of intimate association in furtherance of the Freedom of Association recognized by the Supreme Court in *NAACP v. Alabama* as an extension of First Amendment speech. Such intimate association, Justice Brennan said, must be protected ''as a fundamental element of personal liberty,'' and ''choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion . . . because of the role of such relationships in safeguarding the individual freedom central to our constitutional scheme.'' The Court went on to describe the attributes of such intimate associations as ''relative smallness . . . a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship.''

I should note that the club that Judge Smith belonged to has only 115 members.

I for one, stand by the American people's Freedom of Association as defined by the Supreme Court. As Justice Thurgood Marshall pointed out, the ability to associate as we see fit is part of what makes this country great, and a freedom we honor. And I hope we can all recognize that Judges, or people who might want to be Judges someday, should be just as free as anyone else to exercise that right. There is no point to turning the nomination of Judge Smith into a referendum on the Freedom of Association. And there is certainly no sympathy among the American electorate to turn yet another of President Bush's judicial nominees into a mere single-issue caricature when Judge Smith has an outstanding record of service to our country.

I am very concerned that any further delay of Judge Smith's confirmation will lead to even more cynicism about the Senate in the minds of the American people. The voters who have watched the Judiciary Committee during the past eleven months already know that the vacancy crisis is not tit for tat or mere payback for anything that happened in the past. The voters know that the Democratic leadership has plunged into truly uncharted territory, holding up an absolutely unprecedented percentage of President Bush's nominees and, in the process, allowing leftist special interest groups to smear decent and accomplished public servants in order to serve highly partisan political aims.

There is no better way to understand the extreme partisanship of these powerful leftist groups than to look at the irony in their call for ''diversity'' on the circuit courts of appeal. I of course agree with having a diverse judiciary, but I do not believe that these groups mean what they say.

Let's look at judicial diversity. Right now, over 50 percent of the active federal judges in America were appointed by President Clinton. The best way to ensure diversity on the bench is for the Senate to confirm more Bush nominees who will enforce existing law and leave

lawmaking to the people's elected representatives, including the President's nominees from Minority groups.

But I fear that nominees like Miguel Estrada, whom the President has nominated to be the first Hispanic to sit on the second most prestigious court in the land, are not getting a fair shake because out-of-the-mainstream liberal groups show increasing intolerance to Hispanics and African-Americans who don't subscribe to the left-of-mainstream ideology. The intolerance is not because of race, but because many liberals will not give the time of day to any minority or woman who have become accomplished in any field other than liberal activism. I fear that the Liberals are seriously thinking about shutting the door to our Courts of Appeal to any Hispanic, African-American or woman who does not toe the line of the radical, left-of center special interest groups. That would be a great tragedy for our country. I would be an end to the very diversity that is the strength of America and its judicial system.

We cannot allow outside groups to impede progress. In fact, what we need is to approve more circuit judges at a faster pace to address the vacancy crisis in the federal appellate courts. The Sixth Circuit is presently functioning at a 50 percent capacity. Eight of that court's 16 seats are vacant. President Bush has nominated 7 well qualified individuals to fill the vacancies on that court. Two of those nominees, Deborah Cook and Jeffrey Sutton, have been pending since May 9 of last year—344 days of inaction. They have languished in Committee without so much as a hearing while the Sixth Circuit functions at 50 percent capacity. Another appellate court that is in trouble is the D.C. Circuit, which is missing one-third of its judges: It has only 8 of its 12 seats filled. President Bush nominated two exceedingly well qualified individuals to fill seats on the D.C. Circuit on May 9 of last year. Those individuals, Miguel Estrada and John Roberts, are among the most well respected appellate lawyers in the country. Yet the Judiciary Committee has not granted them a hearing, much less a vote.

Part of the problem is a decision by the Committee not to consider more than one circuit judge per hearing. In fact, the Committee has not moved more that one circuit judge per hearing during the entire time the Democrats have had control of the Senate. When I was Chairman, I had 10 hearings with more than one circuit nominee on the agenda. If we are going to get serious about filling circuit vacancies, then I encourage my Democratic colleagues to move more than one circuit nominee per hearing.

The bottom line of all this is that America is facing a real crisis facing its federal judiciary, especially the circuit courts of appeals, due to the nearly 100 vacancies that plague it. The Judiciary Committee has decided not to make any progress toward remedying this situation. Instead, it is pouring its energy into creative accounting and make believe. But the American people are sick of the charades and are disgusted by the personal destruction for partisan purposes. They want the Senate to help—not hinder—President Bush. I urge my friends across the aisle to focus on this situation, to step up the pace of hearings and votes, to resist the powerful leftists who are the enemies of the independent judiciary, and to do what's right for the country.

HOMESTEAD EXEMPTION TO THE BANKRUPTCY BILL

Mr. KOHL. Madam President, the bankruptcy conference will meet on Tuesday to discuss and attempt to resolve the remaining differences between the House and Senate versions of the bill.

One of those issues is the Senate provision that addresses the single most offensive abuse in the bankruptcy system, the homestead exemption. As we all know, the homestead exemption allows debtors in five privileged States to declare bankruptcy but still shield unlimited millions of dollars in their homes from their creditors.

With every year that passes, we learn of new cases where scoundrels have declared bankruptcy in States like Florida and Texas but have continued to live like kings in multi-million dollar mansions.

Just 2 weeks ago, the New York Times ran a story on former Enron executives like Ken Lay and Andrew Fastow who are doing some bankruptcy planning of their own. They are selling numerous properties around the country worth millions of dollars, but retaining—or in some cases even building—luxury homes in Texas or Florida. Using the homestead exemption, Lay will be able to retain his $7.1 million condominium in the finest apartment building in Houston and Fastow will keep his multi-million dollar mansion currently under construction. They will be able to enjoy their mansions, even if they declare bankruptcy, as their former employees struggle to find a new paycheck or to cover the rent.

Last year, it was Paul Bilzerian—a convicted felon—who tried to wipe out $140 million in debts and all the while held on to his 37,000 square foot Florida mansion worth over $5 million—with its 10 bedrooms, two libraries, double gourmet kitchen, racquetball court, indoor basketball court, movie theater, full weight and exercise rooms, and swimming pool.

The Bankruptcy Conference has a real chance to put an end to this now. The Senate has repeatedly—year after year—voted overwhelmingly in favor of a provision that would put a hard cap on the amount of home equity that a debtor can retain even after bankruptcy. The Senate should insist on a real and meaningful solution to this problem.

But so far, the only compromises we have been offered are road maps that show debtors how to circumvent the law. We have been told that we can only impose a residency requirement of two and a half years

This will not do. First, it does nothing to stop lifelong residents of Texas or Florida. Ken Lay has lived there most of his life. So has Andrew Fastow. They get away scot free under this proposal. Second, most bankruptcy attorneys will tell you that anyone rich enough can plan 2 to 3 years in advance.

In the spirit of compromise, we have agreed to raise the homestead cap to $175,000—a figure that far exceeds the average amount of equity a Houston homeowner has in their house. So, the average homeowner will not be affected at all by this provision, only the extraordinarily wealthy debtor. And even now, we remain open to effective and practical proposals aimed at solving this inequity.

Yet, we may not have an opportunity to reach that compromise. Instead, those that want the bill so badly that they are willing to legislate unfairness into the bankruptcy code are trying to get their way.

We should remember that one of the central principles of the bankruptcy bill is that people who can pay part of their debts should be required to do so. But the call to reform rings hollow when the proposal creates an elaborate, taxpayer-funded system to squeeze an extra $100 a month out of middle-class debtors but allows people like Burt Reynolds to declare bankruptcy, wipe out $8 million in debt, and still hold on to a $2.5 million Florida mansion.

To put it another way, political expediency may well trump fairness. The rich will be able to pour millions of dollars into the value of their Florida home, their Texas ranch, or their unimproved plot of land secure in the knowledge that their creditors will never be able to touch it. Yet, the average debtor will lose their house and most of their personal possessions as they try to repay their debts.

We have made historic changes to the bankruptcy code, but have chosen not to remedy the worst abuse of them all. We can only hope that between now and the conference committee's meeting on Tuesday, the parties to this deal will have a change of heart.

ADDITIONAL STATEMENTS

TRIBUTE TO JAMES GRIMMER

• Mr. SHELBY. Mr. President, today I pay tribute to James B. Grimmer, a business pioneer in Birmingham, AL, and a dedicated community leader and family man. He was responsible for developing over thirty shopping centers throughout the Southeast, which helped to spur business and economic development in the region. Mr. Grimmer died in Birmingham on March 12 at the age of 81. I would like to take a few moments to reflect on the life of