

the rate of single taxpayers, so more families can take advantage of this. Corporations and other entities, including tax-exempt groups, are permitted to make contributions to education savings accounts. These changes are effective right now, this taxable year.

Then we have expanded consideration of prepaid tuition programs. Several provisions will encourage participation in prepaid tuition programs for higher education. Investment gains will be tax free, and private colleges and universities happen to be offering these plans. This provision goes into effect now.

There is an exclusion for employer-provided educational assistance. This extends the exclusion to graduate education and makes the exclusion for undergraduate and graduate education permanent, effective right now.

Then we have improvement in the student loan interest deduction. This eliminates the 60-month limit on the deduction of interest from a student loan. The income phaseout ranges, for eligibility for the student loan interest deduction, increasing it from \$50,000 to \$65,000 for individuals and from \$100,000 to \$130,000 for married taxpayers on joint returns. We repeal the restriction that voluntary payments of interest are not deductible. These provisions are effective right now.

Then we have tax benefits for governmental bonds for public school construction. These benefits are effective for bonds issued starting this year.

There is a deduction for college tuition, a provision allowing above-the-line deduction for college tuition expenses. It is intended to help low- and middle-income families pay for college.

In the years 2002 and 2003, individuals with adjusted gross incomes of \$65,000 may deduct \$3,000. In the years 2004 and 2005, for those same individuals it would be \$4,000. In the case of taxpayers with adjusted gross income that does not exceed \$80,000, the deduction would be \$2,000.

I just read a lot of provisions that were taken from the tax bill. I started my remarks by talking about the stimulus impact of the tax bill we passed 7 months ago, the impact it is going to have at a time of recession. People might raise some question about the education provisions to which I just referred, of their stimulative impact. In a time of recession, obviously beyond the good that education does generally to help people in their lives in the future, we have a situation where maybe in a recession, families would shy away from going to college—their kids going to college, or adults, independent adults going to college. As they look at the provisions of last year's tax bill and the benefits that come from it, they might see the advantage of continuing their education, even at a time of recession.

Any of that money that is spent as a result of that would obviously have some impact as stimulus in the economy. But for the long haul, it is a stim-

ulus, too, because as people are better educated, they are more productive; they earn more money. It helps the long-term recovery of our economy.

I want to make some reference to the estate and gift tax provisions. These have a beneficial impact, but they are not entirely stimulative for right now. Again, we have small business people who tend to be the most harmed by not being able to pass on the family business to their next generation. There is always a lot of anxiety during times of recession and during times of economic downturn.

We ought to do whatever we can to relieve the anxiety of small business people who are under very tough constraints because of the recession. We ought to relieve that anxiety to the greatest extent possible.

It gives me a chance to say what Senator KYL said just before I took the floor; that is, that we have an opportunity on this economic stimulative package to make sure that the estate tax provisions of the bill the President signed last June be made permanent.

I am going to yield the floor at this point. I thank my colleagues for their attention to some provisions of an old story—the tax bill of last year, a tax bill that is going to have beneficial impacts well into the future but, most importantly, has some impact right now as we are in a time of recession.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Vermont.

Mr. LEAHY. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. LEAHY. I thank the Chair.

NEW YORK

Mr. LEAHY. Madam President, I compliment the distinguished Presiding Officer, and her distinguished colleague, Senator SCHUMER, for not only the State of New York but for the City of New York.

I had the privilege of attending the economic summit in New York City this weekend. I saw the distinguished Presiding Officer on several occasions. In fact, I was beginning to think that somehow she had been cloned because she was attending and speaking and was involved in so many different events.

I know the economic summit came to New York City as a gesture of solidarity with the city after the terrible events of last fall. They came there knowing that not only would they bring people from around the world as well as from our own country, but they would bring the press from around the world to show the world that New York City is open, and New York City is in a position to handle, as it always has, any group of any size for any purpose. I want to say that New York City did.

I was extraordinarily impressed with the level of everything from communications, certainly to law enforce-

ment—New York's finest was there—to the continuing work at ground zero. My wife and I and our daughter visited to see again the work that continues by these brave men and women from the New York Fire Department, who are still working there. The police department is still working there, and other agencies as well as volunteers.

I was gratified to see while we were there a number of foreign visitors going to ground zero. Anybody has to be moved just reading the notes that have been left there by family members. While we were there, foreign delegations were laying wreaths and paying homage.

The point, though, is that New York City reflects, really, what is best in America. We have seen a major city of commerce, of education, of entertainment, and of history badly damaged that came right back, and was able to demonstrate that to the rest of the world.

As one coming from the State of Vermont, I sometimes hear regional accents at their best when I go to New York City. I am sure that New Yorkers feel the same way when they come to Vermont. But the accent I heard was one of hope, of excitement, of all the best things that are reflected by that city.

I commend not only the two Senators, my two friends from New York, but everybody—from the mayor to the Governor, and everyone who has worked so hard on this. New York City is open for business, as it was for some members of the Leahy family. It was a pleasure to be there.

ON THE CONFIRMATION OF JUDGE PHILIP MARTINEZ

Mr. LEAHY. I commend the Majority Leader and our Assistant Majority Leader for bringing the confirmation of Judge Martinez of Texas to a successful conclusion today. I also want to thank Senator DURBIN for having chaired the hearing in December that laid the groundwork for the confirmation of Judge Martinez and four other federal judges.

At the Committee meeting at which we considered the nomination of Judge Martinez, I inserted in the RECORD a letter I had recently received from Congressman SILVESTRE REYES of Texas strongly endorsing him. Congressman REYES noted that the court to which Judge Martinez is nominated is facing a criminal caseload of over 2,000 cases with a single active judge in the El Paso region personally trying to manage over 1,100 criminal cases. I say to Congressman REYES and Judge Briones, help should be on the way very soon in the person of Judge Martinez.

It was not so long ago, when the Senate was under Republican control, that it took 943 days to confirm Judge Hilda Tagle to the United States District Court for the Southern District of Texas. She was first nominated in August 1995, but not confirmed until

March 1998. When the final vote came, she was confirmed by unanimous consent and without a single negative vote, after having been stalled for almost three years.

I recall that the nomination of Michael Schattman to a vacancy on the Northern District of Texas never got a hearing and was never acted upon, while his nomination languished for over two years. I recall just two years ago when Ricardo Morado, who had served as Mayor of San Benito, Texas, and was nominated for a vacancy in the Southern District of Texas, never got a hearing and was never acted upon.

These are district court nominations that could have helped solve problems in the trial courts if acted upon by the Senate over the last several years. In addition to these nominees, the Republican-led Senate failed to provide a hearing and failed to take action on the nominations of Jorge Rangel and Enrique Moreno to the same emergency vacancy on the Fifth Circuit Court of Appeals over the last four years.

In contrast, we are moving expeditiously to consider and confirm Judge Martinez, who was nominated in October, received his ABA peer review in November, participated in a hearing in early December, was reported by the Committee on December 13 and is today being confirmed. In addition, Randy Crane, a nominee to a vacancy on the Southern District of Texas District Court will be having a confirmation hearing in the near future.

Just as we have worked hard since July and paid attention to the needs of the district courts in Montana, Kentucky, Kansas and Alabama, whose Chief Judges wrote asking for prompt attention to serious problems, we are responding to the needs of our courts throughout the country.

The first two confirmations to the district courts last summer were Judge Cebull and Judge Haddon to the District Court in Montana. The Chief Judge of that court had written to us asking for our immediate attention and help because he had no active associate judge in that district. We responded. Working with Senator BAUCUS and Senator BURNS, a Democrat and a Republican, the two nominees were included in our very first hearing, which held the day after Committee members were assigned. They were both confirmed the following week, on July 20, 2001.

Similarly, we heard from the Chief Judge of the District Court for the Eastern District of Kentucky. We responded by holding hearings for three judicial nominees to vacancies in that Court and proceeded to confirm two so quickly that they had to delay being sworn in to wind down their legal practices.

Likewise, when we heard from the Chief Judge of the District Court for Kansas, we responded. We moved expeditiously to hold a hearing, report and

confirm Judge Robinson to alleviate the emergency situation that the Chief Judge indicated existed in Topeka.

Yesterday, as the Senate confirmed the second district court judge for courts in Alabama since November, we learned from Senator SESSIONS that the Chief Judge of the Southern District of Alabama had written to him to urge action in filling the vacancy in that court and noted that he was the only active judge left.

Similarly, today we provide relief to the district courts in Texas.

I congratulate the nominee and his family on his confirmation today.

With today's confirmation, the Senate has confirmed four additional judges since returning late last month. The Senate will have confirmed 32 judges since the change in majority last summer. One-quarter of the judges confirmed have been for judicial emergency vacancies, eight so far. Unfortunately, the White House has yet to work with home State Senators to send nominees for an additional 15 judicial emergency vacancies and 31 federal trial court vacancies.

Of course, I have yet to chair the Judiciary Committee for a full year; it has been barely six months. But the confirmations we have achieved in those six months are already comparable to the year totals for 1997, 1999 and 2000 and almost twice as many as a Republican majority in the Senate allowed to be confirmed in 1996.

The 1996 session was the second year of the last Republican chairmanship. In that 1996 session, only 17 judges were confirmed all year and none were confirmed to the Court of Appeals—none. I expect and intend to work hard on additional judicial nominations through this session and to exceed the total from the 1996 session of only 17 confirmations. In that 1996 session, the fourth judicial confirmation did not occur until April. By contrast, we will have confirmed four additional judges by the middle of the first full week in session this year.

The Judiciary Committee held its first hearing of the session on our second day in session, January 24, for Judge Michael Melloy, a nominee to the 8th Circuit from Iowa, and district court nominees from Arizona, Iowa, Texas, Louisiana and the District of Columbia, a total of six judicial nominations.

I have set another hearing on the nomination of Judge Charles Pickering for the 5th Circuit for this Thursday, February 7, 2002.

I am working to hold another confirmation hearing for judicial nominations, as well, before the end of February, even though it is a short month with a week's recess.

I noted on January 25 in my statement to the Senate that we inherited a frayed process and are working hard to repair the damage of the last several years. I have already laid out a constructive program of suggestions that would help in that effort and help re-

turn the confirmation process to one that is a cooperative, bipartisan effort. I have included suggestions for the White House, that it work with Democrats as well as Republicans, that it encourage rather than forestall the use of bipartisan selection commissions, that it consider carefully the views of home State Senators.

This past summer, by the time I became chairman of the Judiciary Committee, federal court vacancies already topped 100 and were rising to 111. Since July, we have worked hard and the Senate has been diligent in considering and confirming 32 judges, thereby beginning the process of lowering the vacancies on our federal courts. Since I became Chairman, 26 additional vacancies have arisen. Still, we have been able to outpace this high level of attrition and lower the vacancies to under 100.

During the last six and one-half years when a Republican majority controlled the process, the vacancies rose from 65 to over 100, an increase of almost 60 percent. By contrast, we are now working to keep these numbers moving in the right directions.

Our Majority Leader, with the help of the Assistant Majority Leader, is clearing the calendar of judicial nominations and the Senate has proceeded to vote on every one of them. This is one of the reforms that signals a return to normalcy for the Senate, which had gotten away from such practices over the past six years. Since the change in majority, judicial nominees have not been held on the calendar for months and months or held over without action or returned to the President without action.

I have observed that to make real progress will take the cooperation of the White House. The most progress can be made most quickly if the White House would begin working with home State Senators to identify fair-minded, nonideological, consensus nominees to fill these court vacancies. One of the reasons that the Committee was able to work as quickly as it has and the Senate has been able to confirm 32 judges in the last few months is because those nominations were strongly supported as consensus nominees.

I have heard of too many situations in too many States involving too many reasonable and moderate home State Senators in which the White House has demonstrated no willingness to work with home State Senators to fill judicial vacancies cooperatively. As we move forward, I urge the White House to show greater inclusiveness and flexibility and to help make this a truly bipartisan enterprise. Logjams exist in a number of settings.

To make real progress, repair the damage that has been done over previous years, and build bridges toward a more cooperative process, there is much that the White House could do to work more cooperatively with all home State Senators, including Democratic Senators.

Of course, more than two-thirds of the federal court vacancies continue to be on the district courts. The Administration has been slow to make nominations to the vacancies on the federal trial courts. In the last five months of last year, the Senate confirmed a higher percentage of the President's trial court nominees, 22 out of 36, than a Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democratic President. Last year the President did not make nominations to almost 80 percent of the current trial court vacancies. As we began this session, 55 out of 69 vacancies were without a nominee.

In late January, the White House finally sent nominations for another 24 of those trial court vacancies. After the Committee receives the indication that the nominees have the support of their home State Senators and after the Committee has received ABA peer reviews, these recent nominations will then be eligible to be included in Committee hearings. Because the White House shifted the time at which the ABA does its evaluation of nominees to the post-nomination period, these 24 nominees are unlikely to have completed files ready for evaluation until after the Easter recess. Even then, over two and one-half dozen of the federal trial court vacancies, 31, may still be without eligible nominees.

We have accomplished more, and at a faster pace, than in years past. We have worked harder and faster than previously on judicial nominations, despite the unprecedented difficulties being faced by the nation and the Senate. I am encouraged that this confirmation today was not delayed by extended, unexplained, anonymous holds on the Senate Executive Calendar, the type of hold that characterized so much of the previous six and one-half years. Majority Leader DASCHLE has moved swiftly on judicial nominees reported to the calendar.

I thank all Senators who have helped in our efforts and assisted in the hard work to review and consider the dozens of judicial nominations we have reported and confirmed. I thank, in particular, the Senators who serve on the Judiciary Committee for their helpful action since this summer. As our action today demonstrates, again, we are moving ahead to fill judicial vacancies with nominees who have strong bipartisan support.

Madam 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.

The PRESIDING OFFICER. In my capacity as a Senator from New York, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The time of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. JOHNSON).

Mr. REID. 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. DORGAN. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. DORGAN. Mr. President, is the Senate currently in morning business?

The PRESIDING OFFICER. No, it is not.

Mr. DORGAN. What is currently pending?

The PRESIDING OFFICER. The regular order is to have the clerk report the pending business.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ENRON CORPORATION CEO SUBPOENAED

Mr. DORGAN. Mr. President, I come to the floor of the Senate to discuss, just for a few minutes, the action taken this morning in the Senate Commerce Committee. We voted unanimously to support a subpoena being delivered to Mr. Kenneth Lay, who is the former chairman and CEO of the Enron Corporation. I want to describe for my colleagues what brought us to this point and why we believed we had to vote to authorize a subpoena being issued.

About 4 to 6 weeks ago, Mr. Lay's attorneys told us that Mr. Lay would be willing to appear before the Senate Commerce Committee. That was in response to a request by us as we began to investigate what happened with respect to the Enron Corporation. As you know, this is the largest bankruptcy in American history. There is substantial information that has been available for some while now, prior to and since the bankruptcy, about things that had happened inside the corporation that cause a great deal of concern.

A memo by one of the vice presidents of Enron was presented to the CEO, Mr. Lay, in August of last year. That memo by Vice President Watkins talked about accounting hoaxes and irregularities of sorts, and warned about what people would find if they dug into the partnerships that were being created in this corporation.

Then, in November and December, that company's auditors, Arthur An-

dersen and Company, talked about possible illegal acts with respect to that corporation and the review of some documents.

Then, last Saturday, a report that was commissioned by the board of directors of the Enron Corporation, the Powers report, described a broad range of very serious problems that went on inside that corporation.

At any rate, during this period of time we had requested the testimony before the subcommittee and the full committee of the Commerce Committee by Mr. Lay. His attorneys said he would be made available on February 4 at 9:30 in the morning. They continued to say that even through last Friday and Saturday.

On the Sunday evening before Mr. Lay's scheduled appearance, we were called by his attorneys. They told us that Mr. Lay had changed his mind and he would no longer be available to testify and would therefore not appear on Monday morning.

Mr. Lay's attorneys wrote a letter saying the problem was that Mr. Lay had heard comments about his company that concerned him. They felt it would probably be a prosecutorial kind of environment in the committee hearing on Monday, and therefore he did not want to appear.

The fact is, the comments that were made by a number of Members of the Senate prior to Sunday were no different than the assertions made to the CEO of Enron by his own employee last August, by his accounting firm in November and December, and especially by his own company's board of directors on Saturday last.

Mr. Lay, in my judgment, following the report by the board of directors of this corporation, decided that he did not want to talk to anybody publicly and decided to lay it off on some Members of Congress, saying that is the reason he did not want to come and testify.

Let me tell you what was in that report, just to give one small example. This report says that in this corporation, one of the corporate officers, Mr. Fastow, in creating one of the partnerships—incidentally, there were a lot of secret partnerships created here—Mr. Fastow invested \$25,000 of his own money in a partnership in a corporation of which he was an officer. Sixty days later, that \$25,000 was \$4.5 million to Mr. Fastow.

Does anybody in this room know of investments like that? Would you like to make a \$25,000 investment that, in 60 days, becomes \$4.5 million? Where can you do that? The lottery, but that is not a sure thing.

No, this wasn't gambling inside the corporation. This was just people playing fast and loose with the truth and with other people's money. When someone takes \$25,000 and turns it into \$4.5 million in 2 months, in my judgment, that is stealing. That is just stealing—yes, quote unquote, stealing—from investors who own the shares in that corporation.