

1 year of health insurance to retirees who right now are losing their benefits—to tide folks over while we work on the larger problem.

And that, incredibly, is what President Bush yesterday announced his opposition to. It is now abundantly clear, if there had been any doubt, that this President is not interested in health and well-being of our steelworker families.

In Minnesota, on the Iron Range, there are several thousand retirees who find themselves in desperate need of assistance and this administration is turning its back on them.

Earlier this year, the HELP Committee held hearings on the need for legacy cost legislation both for retirees and for the industry. The testimony was riveting. The need compelling. My good friend, Jerry Fallos, president of Local 4108 of the United Steelworkers of America, testified at those hearings. The stories he had to tell were grim indeed.

As Jerry said, the people of the Iron Range are used to hard times. They have weathered any number of challenges over the years. They are good people, proud, hard working—the best you can find anywhere. They are survivors—and they will get through these difficult times as well. They have given much to their country, and now they need our help.

The good people of the range have responded to their country in its times of needs. Over the years our Nation's economy flourished and our manufacturing industries boomed from the iron ore produced through the labors of steelworkers on the range.

Yesterday, when President Bush announced his opposition to helping these steelworker retirees he said it would cost too much. We think his \$800 million estimate is way off, but even if you accept it at face value, it pales in comparison to the billions and billions of dollars of tax giveaways this administration is happy to make available to multinational corporations and the wealthy.

We are talking about \$120 billion over 10 years to make the estate tax permanent, and \$400 billion over 10 years to make all of the tax cuts permanent. Are these our priorities—\$400 billion to multinational corporations and wealthy individuals as opposed to \$400 million to help steelworker retirees keep their health insurance for 1 year?

I have asked many times before: Where are our priorities; where are our values? How can we tolerate such choices—tax breaks to help multinationals over health insurance for steelworker retirees?

These families need our help. I urge my colleagues not to turn our backs on these men and women who have served their country so well.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. Fourteen minutes.

JUDICIAL NOMINATIONS

Mr. LOTT. Mr. President, I have been wanting to speak about the situation with regard to the President's judicial nominations. I have a number of points I wish to make.

I know there were some discussions about the nominations earlier this morning and even this afternoon. The major point we are trying to make today is that today is the 1-year anniversary of eight of the President's nominations to serve on circuit courts. These minorities, men and women, have not even had the courtesy of a hearing, let alone a vote in the Judiciary Committee.

I have learned over the years that when you are talking about judges and judicial nominations each side will have their statistics about what happened in the Clinton years, what happened in the Reagan years, and what happens right now. But the fact is, these eight nominees have not even had a hearing; they have been pending for a full year.

There are actually 11 nominees who were sent forward in a group—the first nominations of President Bush. Three of those have been confirmed. Two of those, I might add, were recycled, in effect, because they were Democrats, or were selected by Democrats, and they were qualified. The President resubmitted their names. They got through the process. But these eight have not had any further consideration for a full year.

You can argue statistics. But usually Presidents get their circuit nominations confirmed within a year of having them sent forward.

The President sought men and women of great experience and who meet the highest standards of legal training, temperament, and judgment—for all of his nominations, but particularly for this first group of circuit court nominees.

He sought out nominees who respect the powers given to them by the Constitution and who will interpret the law—not make the law. He sought out nominees who have reputations as lawyers of skill, discernment, and high character. He even sought out nominees who had a great deal of experience in arguing cases before the Supreme Court. In this group of eight nominees, they have collectively appeared before the Supreme Court over 60 times. One of the nominees has alone argued before the Supreme Court 30 times. In terms of their education, their experience, and their integrity, this group is unimpeachable and quite remarkable.

Here are these individuals' pictures. I think a picture helps inform our debate, because it takes the debate away from the realm of just statistics or mere names.

Mr. President, when we are talking about judges who have been delayed, we are talking about Miguel Estrada, who was born in Honduras, and has lived the American dream. He has tremendous experience in his profession,

including serving as Assistant U.S. Solicitor General under President Clinton, a Supreme Court law clerk, arguing 15 cases before the Supreme Court, and working as a Federal prosecutor. He also graduated magna cum laude from Harvard Law School—not an institution known for turning out conservative lawyers, or judges—but certainly an eminently respected institution as far as quality, high standards, and academic rigor are concerned. Yet Estrada has been denied a fair hearing.

Why? Noone has suggested he is not qualified by education, by experience, or by professional or personal integrity.

Does he have a conservative philosophy? Does he believe in strict construction of the Founder's intent in interpreting the Constitution? Yes. Does that disqualify him? It should not.

I voted for Justice Ginsburg when she came before the Senate. I did not agree with her judicial or legal philosophy. I knew she would rule quite often in ways with which I would not agree. While most justices exercise discretion, you can't always count on how they may rule. But she was qualified by experience, by education, and by personal integrity and demeanor and I voted for her regardless of the fact that her philosophy was contrary to my own.

Unfortunately, I cannot think of any other reason than ideological prejudice for why Miguel Estrada has not had a hearing and an opportunity to be voted on—despite the fact that he was unanimously given the ABA's highest rating, "well qualified" by the American Bar Association which is supposed to be the Democrat's Gold Standard for evaluating nominees judicial qualifications. Yet, Miguel Estrada has not even had a hearing.

Another example, which is clearly one that is hard to understand, is the delay in considering Justice Priscilla Owen, a nominee to the Fifth Circuit Court of Appeals. I have a special feeling in my heart about this circuit because it does include my State of Mississippi. Judge Owen has served on the Texas Supreme Court since 1994. She has been involved in business in the private sector. She is an outstanding graduate of Baylor Law School in Texas.

Again, by education, by experience, and by personal integrity, this is a lady who should have been accorded a hearing and a vote by now in the Judiciary Committee and on the floor of the Senate.

Mr. President, why do we need another pound of flesh concerning the Fifth Circuit Court of Appeals? Is Judge Charles Pickering who has already been voted down in the Judiciary Committee not enough. If we are looking for tit for tat, how about just saying: OK, good, take that, Mr. President, TRENT LOTT, Republicans, we repaid you what you deserved from the past? But how does all of that apply to Priscilla Owen? Why has this lady not been accorded a hearing? Remember,

once again, that she has been pending for a full year.

One interesting thing of note, Mr. President, is that two of these nominees, were actually nominated by the first President Bush. So they in a sense have been waiting over 10 years to get a fair hearing and be confirmed to the circuit courts.

John Roberts is one of those two, and has again been nominated to the DC Circuit Court of Appeals. He is one of the Nation's leading appellate lawyers, having argued 36 cases before the U.S. Supreme Court, and serving as a Deputy Solicitor General for our Nation. He also graduated magna cum laude from Harvard. So again, by education, by incredible experience, and by personal integrity, he has stellar qualifications to serve as a circuit court judge. Yet, he too has been denied a fair hearing and an opportunity to be considered by the Senate by the majority of Democrats on the Judiciary Committee.

Mr. President, our Nation's fourth President, James Madison, was certainly correct when he said that the courts exist to "exercise not the will of men, but the judgment of law." This President has gone to great lengths to nominate the kind of men and women who will do that once they are confirmed.

Another nominee who has been delayed for over a year without cause or justification, is Justice Deborah Cook, nominated to the Sixth Circuit Court of Appeals. She has served as a justice on the Ohio Supreme Court since 1994. Before becoming a judge, she was the first woman partner at Akron's oldest law firm. She is a graduate of the University of Akron Law School.

This is the circuit where half of the judicial seats are vacant. There is a long history on why that is, but the fact is that again the nominee is an eminently qualified nominee. And she has been waiting 52 weeks for a hearing even though the ABA voted unanimously that she was qualified.

So what is the problem, Mr. President? There are no allegations of improper conduct. There are no allegations that she is not qualified by experience, by education, or by demeanor, yet she is still waiting on a hearing.

Yet another nominee unjustifiably delayed is Judge Terrence Boyle, a nominee to the Fourth Circuit Court of Appeals. He was unanimously confirmed to be a Federal district judge in 1984.

Mr. President, one of the things that struck me as very interesting about Judge Pickering's treatment by the Democrats was that he has been a sitting federal district court judge since 1990, over 12 years. And now we have a nominee who has been a Federal district judge for almost two decades, who was unanimously confirmed in 1984. The former chairman of the State Democratic Party in North Carolina even supports his nomination. He is a graduate of American University's Law

School. This is one of the two nominees, the other being John Roberts, who was first nominated to be a circuit court judge back during the first President Bush's administration. He was younger and well experienced then, and he now has another decade of experience as a Federal district court judge to his credit. And here he is back again, only to be denied a fair hearing by the Democrats.

So, in each and every one of these cases, there is no explanation for the year-long delay in giving President Bush's first group of nominees prompt and fair treatment.

Michael McConnell has been nominated to the Tenth Circuit Court of Appeals and again he is an eminently qualified legal scholar. He is one of the Nation's leading constitutional scholars, the author of legal books, and a prolific contributor to law journals. He has argued 11 cases before the Supreme Court. His reputation for fairness and integrity has generated support from numerous law professors. He is a graduate of the University of Chicago Law School. Again, on what possible grounds is such an extraordinarily qualified individual denied a hearing for over a year?

Judge Dennis Shedd, a nominee to the Fourth Circuit Court of Appeals, was another nominee unanimously confirmed to be a Federal district judge in 1990—yet another sitting Federal district judge, Mr. President. He is strongly supported in his home State by both Senators—Senator FRITZ HOLLINGS and Senator STROM THURMOND—and served in the past as chief counsel to the Senate Judiciary Committee. He is one of ours no less. Yet, he has been waiting unjustifiably for over a year for a fair hearing and a vote.

Mr. President, I believe I have talked about each one of the nominee's personal qualifications to serve on the circuit courts of America. I should note that, back in January, the chairman of the Judiciary Committee indicated there would be a hearing for Justice Priscilla Owen, Michael McConnell, and Miguel Estrada—and that they would have hearings this year. Now, I guess we have 4 more months that have expired, another 4 months in which they have not been given a hearing much less a vote.

I hope they will given more than the courtesy of a hearing, which seems the minimum they should have. They should have a vote in the Judiciary Committee and then a vote here in the full Senate.

Mr. President, the delay in confirming such well qualified nominees to be judges has had an adverse impact on the judicial system itself. The number of vacancies has gone up over the past year—there are now almost 100 judge-ships vacant—while 44 nominations languish in the Senate. As a result, justice is being delayed as the caseload burden increases for almost every current judge in the nation.

I would take a moment to note one curious thing about today's efforts re-

garding judges. We had six judges on the calendar ready to be voted on; but only four were moved, the other two were not. One of the two nominees has a very close association with Senator HATCH. The other one is the lone circuit judge on the calendar. So, once again, it appears circuit judges are receiving worse treatment by the Judiciary Committee than are the Federal district court nominees.

I realize around here we get to thinking: Well, wait a minute, circuit courts are more involved in the interpretation of the law. Maybe they are more important. But I will tell you what, if you ever practiced a day of law, the ones you see who really are dealing with the law every day are the Federal district judges. I do not understand the big dichotomy here and why the circuit judges are being delayed and treated so unfairly.

I want to point out what is happening in terms of these circuit judges nominated by President Bush as compared to the treatment that was afforded circuit court nominees during President Clinton's first two years in office.

First off, I should note that while President Bush sent his first nominations up on May 9, 2001, a year ago, President Clinton did not send up his first batch of nominations to the Senate until August of his first year in office.

So, there was actually less time to actually get President Clinton's nominees confirmed than there has been to get George Bush's out.

Yet you can see from the chart what is actually happening with Bush's nominees, particularly with respect to the circuit judges. President Clinton, in the 14 months after his first nominee was sent up, got 86 percent of them confirmed by the time Congress adjourned. Ultimately, over the course of the following Congress, Clinton ended up getting almost all of the judges he nominated during his first Congressional term. Again, I am not going to get into great arguments over the exact percentages or numbers, but there is clearly a problem here. While Clinton got 86 percent of his circuit judges by the time his first Congress adjourned, President Bush only has 30 percent so far. And at the current pace the judiciary is considering Bush's nominees, it looks like Bush is not going to break 50% by the end of this Congress.

It looks as if we might get two or three more circuit judges by the end of the year, but it surely is moving deliberately slowly. The American people recognize this is a problem for the country. When you have a circuit like the 6th circuit that has a 50-percent vacancy rate, then you begin to wonder, do we have enough judges to cover all the cases, even the truly important ones?

This is a question of law and order, Mr. President, drug cases, terrorist cases.

Justice Rehnquist, the Chief Justice, has decried the vacancy crisis as

"alarming." More than 10 percent of Federal judgeships are currently vacant. So this problem for our nation that is very serious, particularly after the terrorist attacks in New York and here in Washington.

I have talked to Senator DASCHLE about it. Senator NICKLES and I, along with Senator HATCH, have talked to Senator LEAHY and Senator REID. I know, having been majority leader, that sometimes these problems are hard to resolve. The Judiciary Committee doesn't always follow instructions even from the elected leaders. But this creates a problem. We have been trying to resist slowing down or blocking meetings or progress on the legislative process because we want to move forward on these important bills. But we have to point out that there is a blatant unfairness here, to the country and to the nominees. I can't help but think of the cliché that justice delayed is justice denied. That is what is happening here.

I know my time is running out. I probably will come back and talk more about this later. I ask for fairness, fairness for these eight circuit judges. We can argue about the others later, the other circuit nominees, other district judges, but after an entire year President Bush's first eight nominees should have a hearing. They should have a vote on the Senate floor. No criticisms have been raised against them other than un-attributed hints that they are conservative, and the current majority in the Senate is looking for some sort of a litmus test or conformance, I guess, based on philosophy and ideology. I don't think that either fair or appropriate. It is not what is called for under the Constitution. I hope that the Senate will ultimately find a way to make progress in this area and give these nominees the opportunity to be fairly considered based upon their temperament, professional and educational qualifications, and their personal integrity.

As President Bush has noted in making the case for getting his nominees confirmed, Federal judges are key to making sure America functions well. Every day they uphold the rights of an individual, they protect the innocent, they punish the guilty. Their rulings are essential to the rule of law in our nation. To discharge their responsibilities the federal courts must have judges."

Because of the number of vacancies in our nation's courts, Americans are being forced to wait for justice, and the burden on federal judges is growing heavier.

Mr. President, one newspaper, the Wichita Eagle, got it exactly right on the judges issue back in March in part I think because it is located in the heart of America when it said: "But just as presidents have an obligation not to nominate the incompetent or unqualified to the federal bench, presidents deserve the broad authority in making their choices for such judicial

posts. And the Senate has a responsibility to give those choices every possible consideration and, barring some glaring defect, confirm them quickly. Yet the backstabbing and stalling on judicial confirmations has escalated to the point of obstructing justice. It needs to stop."

This President's nominees are men and women of distinction and great accomplishment. They are solidly within the mainstream of American legal opinion, and they share a principled commitment to follow the law, not legislate it from the bench.

Mr. President, President Bush' nominees should be given fair hearings, voted on, and confirmed by the Senate as soon as possible.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, the people who have been discussing and negotiating the trade matter have asked for a little additional time. In order to accommodate their discussions, I ask unanimous consent that the period for morning business be extended until 3:45.

Mr. LOTT. Mr. President, at this point I would have to object. I don't know that I would want to. I just have not had a chance to discuss this with Senator DASCHLE.

The PRESIDING OFFICER. The Senator from Georgia.

(The remarks of Mr. CLELAND pertaining to the introduction of S. 1492 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Nevada is recognized.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the time for morning business expire at 3:45 today.

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

The Senator from Kansas is recognized.

JUDICIAL NOMINATIONS

Mr. BROWNBACK. Mr. President, I rise to speak about the past year's judicial nominations, which is something on which several people have spoken today. I just came from a meeting with the President where he was talking about his frustration in getting judicial nominees considered. He was quite animated and discouraged that we have not been getting more judicial nominees through the system—particularly circuit court judges. That is what he was stating. That is what the meeting

was about. He wants to see more happening and more of them occurring, and we need to do so. People have been pretty clear on the information of what technically and specifically has happened.

Since May 9 of last year, we have had 11 judicial nominees for the U.S. circuit courts of appeal. Those eleven were nominated 1 year ago. Since that time, only 3—including 2 Democrats—have been confirmed. Of the remaining 8, not one has even been scheduled for a hearing. We have not held hearings on these individuals. We need to get this done and start to move them forward. It is an issue that is engaging the country, and I think increasingly so, as we move into the fall. We have a number of pieces of legislation that I think, in the post 9-11 environment, will be considered and looked at by the courts and need to be reviewed. We need to have a fully staffed court. Right now we have a 20-percent vacancy on the circuit court; and within some of the circuits, it is even a much larger one.

In the Sixth Circuit there are 16 positions and only half of those are filled.

What is even more troubling is that we have had a long and established tradition of giving the President—regardless of his political affiliation—a good deal of deference on his nominees who might be unfairly targeted as being extremists.

However, as we found out during the Charles Pickering nomination and subsequent hearings, the real extremism is being employed by those people who are artfully using the terms "balance" and "moderation" to set the stage for ending deference to the President and excluding perfectly qualified judges. Judge Pickering was an individual nominated to go on the circuit court. He served on the Federal bench for over 10 years.

This practice does not bode well for the future of this committee when it may have to deal with Supreme Court nominees in the near future. To highlight just how bad it can be, it might be helpful to see how many Supreme Court Justices of the past would fare under the ideological litmus test that is now plainly evident and used on the committee.

Would some of our great Justices of the past survive the litmus test being put forward by the committee now?

John Marshall, the first Chief Justice of the Supreme Court and author of some of the most important legal decisions for this Nation, would likely be rejected today by the Judiciary Committee because his view on interstate commerce in the *Gibbons v. Odgen* would be seen as too pro-federalism.

Oliver Wendell Holmes, perhaps the greatest Supreme Court justice, would have trouble because he affirmed a state law providing for the sterilization of the mentally ill in *Buck v. Bell*. Felix Frankfurter, an ACLU member and a "liberal" Roosevelt appointee, would be rejected because he did not believe that the fourth amendment required the exclusion of evidence seized