

that was startling to me. I think I spend a lot of my time worrying and thinking about coastal communities because I represent a large number of people on the coast. Two-thirds of the American people live within 50 miles of the coast. So our country is really a ring. So the coastal communities and their special needs and their special requirements deserve some more attention from Congress.

I have to say that NOAA and the Department of Commerce are really doing some very good work. I think we need a little bit more attention to our coastal communities in this country than we are giving. There are ways we can do that.

Let me turn my attention to another issue on a completely different subject. But, this a grave threat facing our Nation, and that is our potential conflict with Iraq.

I support Joint Resolution No. 46, which was introduced this morning. I am proud to be a cosponsor with Senators LIEBERMAN, WARNER, MCCAIN, and BAYH and to add my name to that resolution. I do so with the greatest of seriousness. I do so because I am convinced that this is the right course.

I commend the President and the Members of Congress who have worked in a bipartisan way to fashion a resolution that does the job, that gives us what we need, which is a tool, a weapon, in some ways, that will try to force a regime that has been recalcitrant and reluctant to abide by international law and dismantle its weapons of mass destruction. In the international community, Iraq is a regime that is quite dangerous to the people it purports to serve—and of course it does not serve—the people of Iraq. It is dangerous also to the people of the United States and to Iraq's neighbors in the Middle East.

I have the great privilege to serve on the Armed Services Committee and to chair the Emerging Threats Subcommittee. I want to stress that it is the Emerging Threats and Capabilities, because I don't want to mention only threats. We have so many great capabilities in this Nation that we do not have to cower in fear. We have the strongest military, the greatest brain power, and great technology. Most importantly, we are founded on freedom and liberty.

We have tremendous capabilities. But, we are in a great and historic process in this Nation of restructuring our Armed Forces, both in the traditional sense that we know of our Navy, Army, Marines, and Air Force, and in a totally nontraditional way, which is standing up homeland defense to fight these new threats. The new threats are people just like Saddam Hussein—rogue leaders with no decency, who play by no normal rules, who govern by fear, and at the slightest provocation, for reasons we might not understand, could either themselves use weapons of mass destruction, or allow to be used by terrorists or nonstate actors. It is clear for all to see that Saddam Hus-

sein possesses biological and chemical weapons, and he has designs to increase his stockpile. To our knowledge, he does not have nuclear capabilities. However, evidence most certainly suggests Saddam Hussein is actively trying to develop nuclear weapons. Weapons he could use against the United States and our allies. I think a resolution such as this is important for us to express our unity, as an elected institution, that we are prepared to use force, if necessary, to dismantle weapons of mass destruction, to disarm this regime, to change this regime and try to establish for the benefit of the United States, our allies, the people of Iraq, and the world, a more worthy regime for Iraq.

What I support specifically about the resolution, and helped in some ways to craft with words, comments, and suggestions, is that this bipartisan resolution has stressed at least three important principles. The resolution requires—and I think this is very important—all diplomatic means be exhausted. This is critically important and necessary because we never want to rush to war. We do not want to be trigger happy. We want to use all diplomatic means to meet our ends.

For 10 years, we have tried many things with Iraq—economic sanctions, back channel diplomacy, meetings and conventions, and other diplomatic means to compel Saddam Hussein to comply with international law. Nothing yet has worked. But let's hope that something will work, and let's exhaust those means. Once we reach that point, this resolution authorizes the President to use all necessary force to enforce what we know is right.

I am pleased we have the diplomatic requirement in the resolution. But we know all too well that Saddam only respects force. With the threat of force, diplomacy may yet win out.

The second principle outlined in this resolution, which I greatly support, is that it is limited in scope to Iraq. The original language I thought, and many of us expressed, was somewhat vague and called for language to establish stability in the region. Such language created a lot of unanswered questions. This resolution is more clear in its language that the scope is limited to Iraq and greatly strengthens this resolution.

This resolution thoroughly makes clear that our goal is not a war against the people of Iraq, but a war against a leader who has discredited himself, thumbing his nose at 16 resolutions, and not playing by the rules of a civilized government. Should we go to war, this war will be waged to disarm Saddam Hussein, to dismantle his weapons, and to use force to change his regime.

This is not without risk. I am mindful of the risks, and I am mindful of the price that may need to be paid in terms of treasure and lives. I am also confident that it is the right resolution at the right time in the right spirit to

give the President the authorization to use force to do what needs to be done, which is to dismantle this dictator's ability to wreak havoc on the civilized world.

The timing of the attack, of course, and all the military strategies should be carried out with great care and the consultation of our best military minds. It could be this year, it could be next month, it could be a year from now—whenever our military believes it is the time and everything is in place. We must be mindful not to second-guess or try to use any political influence to sway the military in terms of their strategy to accomplish this end. What Congress can do is authorize the Commander in Chief to use force, if necessary, with this specific resolution which I think is a very good document for how we should approach this possible war.

Furthermore, this resolution places a necessary vital requirement on the President to report to Congress on a periodic basis on the progress of the war. Because we, under the Constitution, of course, have a responsibility to determine if this effort should receive funding. War comes with so many great costs, and we must regularly re-evaluate the need to pay those costs of war.

I yield the floor and 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. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DAYTON). Without objection, it is so ordered.

THE SENATE'S UNFINISHED BUSINESS

Mr. NICKLES. Mr. President, today is October 2, the second day of the new fiscal year, and this Congress has not passed any appropriations bills. We have passed a continuing resolution that takes us to next Friday, and I guess we will pass another one that takes us into the following Friday, October 11. This may be one of the poorest records we have ever had.

We do only a few things in the Senate. We pass bills, changing some laws. We may occasionally do something very important such as a war authorization or resolution dealing with Iraq. Every once in a while we might create a new Cabinet-level department. We have the Department of Homeland Defense that has been before this body for the last 4 or 5 weeks, but we have not been able to draw it to a conclusion.

Then we spend money and occasionally we change the tax laws. We spend a lot of money. That is something we do every year, but we have not gotten it done this year. We have not passed our appropriations bills. As a matter of fact, this year for the first time since 1974 we have not passed a budget.

The House has passed a budget. We did not pass a budget. Because we did not pass a budget, we have had differences with the House. The House has passed a few more appropriations bills than we have. We have only passed three. Three out of 13 is not a very good record, and none have passed conference. I hope, and I would expect, that we would be successful in passing the Department of Defense appropriations bill next week. We certainly should. I think it would be grossly irresponsible of us to leave without passing the Department of Defense appropriations bill, but we actually should have done a lot more. I believe the reason we did not is because we did not pass a budget, so we did not get that done.

Something else we did not get done is we did not confirm enough judges. We now have the Department of Justice reauthorization bill. It is the first time we have reauthorized the Department of Justice in 20 years. I have been in the Senate for 22 years, so I guess we did it back in 1982 or 1983. So maybe it is long overdue.

When I look at the conference report—and it is a fairly extensive conference report—it creates 20 new judge positions through permanent and temporary judgeships. Now, that is well and good, but we have a lot of judges who have been nominated for existing positions who have yet to be confirmed—in many cases yet to be considered. I notice we are going to set up several permanent and several temporary positions in this bill.

I do not doubt that in many cases along the border, particularly in southern California, Texas, Arizona, and others, there is a demand for new judges with the caseloads they have. So I am not disputing the fact that either permanent or temporary judges who are called for in this bill are needed, but I find it ironic when I look at the current status of judges. There are 47 judges who are now pending, many of whom have been nominated for over a year, and we are in the process of creating an additional 20 new judgeships.

Some of these people I mentioned have been nominated for over a year, many of whom were nominated on May 9, and they have yet to have a hearing. Several of these nominations are outstanding individuals, and I will mention a couple. John Roberts has been nominated for the DC Circuit. He has argued 37 cases before the United States Supreme Court. He was nominated 510 days ago, on May 9. He has yet to have a hearing.

If this is an individual who has argued 37 cases before the Supreme Court, somebody thinks he is well qualified. As a matter of fact, he has been rated well qualified by the ABA. He was managing editor of the Harvard Law Review. He is a Harvard law graduate, magna cum laude; unanimously rated well qualified by the ABA; law clerk to Supreme Court Justice Rehnquist; principal Deputy Solicitor General between 1989 and 1993.

I have requested that John Roberts have a hearing and be voted on in the Judiciary Committee, and I have not been successful. I think it is hardly fair to him, an outstanding attorney, more than well qualified, to not have even had as yet a hearing before the Judiciary Committee.

Miguel Estrada just had a hearing before the committee. I thank the chairman of the Judiciary Committee for finally having a hearing on Miguel Estrada. This is a young man who has argued 15 cases before the Supreme Court. He was unanimously rated well qualified by the ABA. He immigrated from Honduras as a teenager, could hardly speak English, and he graduated at the top of his class from Harvard Law School. He was a law clerk to Justice Kennedy. He is a former Solicitor General and assistant U.S. attorney.

He had a hearing. As of yet—maybe this will change and I hope it will change—he has not had a vote in the Judiciary Committee. Some people said they want more information from Mr. Estrada. Frankly, they are just running out the clock because they do not want to vote on him. Miguel Estrada is more than qualified. He should be confirmed. Even a “conservative newspaper” such as the Washington Post says he should be confirmed, and we have yet to get a vote on him in committee. I hope we will.

Michael McConnell was nominated for the Tenth Circuit. He is a professor of law at the University of Utah, unanimously rated well qualified by the ABA. He is one of the country's leading constitutional law experts. He has argued 11 cases before the United States Supreme Court. He graduated the top of his class from the Chicago Law School. He was a law clerk for Justice Brennan. Prior to that, he was Assistant Solicitor General. Again, he is eminently well qualified.

The committee held a hearing on Mr. McConnell on September 18. I ask the committee to please put him on the calendar and on the agenda for the next business meeting, which is next Tuesday. I urge the committee to do so, and I hope vote affirmatively for Michael McConnell to be on the Tenth Circuit Court.

Jeffrey Sutton was nominated for the sixth circuit, which is half vacant today. It needs judges to fill the vacancies. He is rated well-qualified by ABA and qualified by ABA majority. He graduated first in his class at Ohio University College of Law. He law-clerked for Justices Powell and Scalia and argued nine cases and 50 merits amicus briefs before the Supreme Court. Prior to that, he was State Solicitor in the State of Ohio, he clerked for Supreme Court Justices and is very well qualified. Nominated 510 days ago, and has yet to get a hearing before the Judiciary Committee.

Deborah Cook, also from Ohio, also on the sixth circuit. Unanimously rated well-qualified by the ABA. She has been a Justice of the Supreme

Court of the State of Ohio since 1994. She sat on the Ohio District Court of Appeals from 1991 to 1995 and chaired the Commission on Public Legal Education. She is a member of the Ohio Commission on Dispute Resolution. Again, I remind Members, the sixth circuit is almost half vacant: Seven out of the 16 spots are vacant. I urge the committee to move forward. Deborah Cook was nominated May 9, 2001, and has yet to have a hearing.

Terrence Boyle was nominated for the fourth circuit. He presently is a chief judge on the U.S. District Court in the Eastern District of North Carolina. He has held that position since 1997. He was rated unanimously well-qualified by ABA. He went to American University, Washington College of Law; was minority counsel, House Banking subcommittee; also legislative assistant to Senator HELMS; and a partner in a North Carolina law firm, and a prior district court judge. He has been a sitting judge on the U.S. District Court in North Carolina since 1997, and was nominated on May 9, 2001. He has yet to have a hearing before the Judiciary Committee.

I mention these, and urge the committee—it is not too late to move forward with some of the well-qualified people. Hearings have been held on Miguel Estrada and Michael McConnell. They can be voted on next week. I urge them to do so. I plead with them to do so.

I like to cooperate with my colleagues, and I look at the conference report on reauthorizing the Department of Justice. There are a lot of things in this bill a lot of Members would favor, and some things perhaps some have reservations about. The majority of this bill never passed by either the House or the Senate. Now I mention that to let my colleagues know there are rules against doing that in the Senate, rules to protect Members. You do not have the House pass a bill, the Senate pass a bill, and have totally extraneous measures put in a bill in conference and say: Take it or leave it. It is called rule XXVIII.

I mention to my colleagues, this is a rule to protect Members of both parties in both bodies, to make sure we follow the proper legislative process. Usually in Politics 101, we learn you pass a bill, the bill passes the House or passes the Senate, you go to conference and work out the differences, but the bill has to pass one of the Houses to go to conference. The majority of this bill did not pass either House; the majority of the bill—whole sections of the bill. I am not saying I have objections to many pieces of the bill. I don't doubt I would not vote for a lot of it.

Included in this bill are intellectual property rights. Again, never passed the House or the Senate, but it is in this bill. There is a juvenile justice section, an entire new section, there is criminal justice, civil justice, and immigration changes, improvements of criminal justice, intellectual property,

all of which never passed the House or the Senate, and would be subject to rule XXVIII if the rule was invoked.

I bring this to my colleagues' attention, knowing this rule is there and that at least this Senator, for one, realizes we have an opportunity and an obligation to legislate correctly. This Senate is becoming more and more willing to bypass committees, bypass legislative process, report bills, take up bills directly to the floor without ever going through committee, not giving committee Members the opportunity to have amendments, to have discussion, to have vetting, offer alternatives, or come up with bipartisan approaches.

I found this year very frustrating in both the Energy and Natural Resources Committees on which I serve. We had the most significant piece of legislation in the energy bill since I have been a Member, and it was not even marked up in committee. Yet we spent 7 weeks on the floor of the Senate marking it up. Not a good way to legislate. That bill is in conference. I hope we can come up with a conference report that is a good piece of legislation. That remains questionable.

We had prescription drugs many wanted to mark up in the Finance Committee. We did not do that. We bypassed the Finance Committee. The Finance Committee never had a markup on the most expensive expansion of Medicare since its creation in 1965. We had a debate on prescription drugs with several alternatives, some of which, in my opinion, were fatally flawed. Part of that is because they were not vetted. We did not have a thorough discussion in committee. If some of the obvious flaws were introduced on the floor, they would have been exposed and probably corrected, and we probably would have passed a bipartisan bill that would have had enough momentum to not only get through the Senate but be a strong force in conference, and thereby provide prescription benefits for Seniors. We did not do that because we did not go through the committee. We are breaking the process.

I did homework on the Finance Committee. In every major expansion in Medicare for the last 22 years, almost every one except one went through the committee process and ended up with a bipartisan majority on the floor of the Senate and helped become law. Usually, the Senate markup vehicle that came out of committee was strongly supported on the floor and strongly supported in conference, and was close to being the vehicle to become law. Sometimes it is adjusted with our friends and colleagues in the House.

When you take a bill directly to the floor, and I note now there are a couple of other packages that some say, rule XIV—in other words, take directly to the Calendar a provision dealing with give-backs, additional money for Medicare, some for rural hospitals, some for doctors, some for other providers. Let's bypass the committee and go directly

to the floor and, yes, we will spend \$40 or \$50 billion in doing so, most of which will be spent the first year or two.

What happened to the committee process? Shouldn't every member of the Finance Committee have a chance to say, I think we can do a better job? Maybe we can do it more efficiently or better. No, we bypass the committee and take it directly to the floor.

Now I understand we are going to bypass the Finance Committee on a small business package. I used to be a small businessman. I have ideas what should be in that package. I would like a say-so in the amendment. We will not get a vote. No Finance Committee Member—maybe one or two that are putting the package together, but the rest of us on that committee do not get to vote. We did not get to offer an amendment. We did not get to say, we do not think that should be in, maybe something else should be in.

Should we have "pay-fors"? What should they be? Do we have tax cuts and tax increases? What should they be? How can we best stimulate the economy? Some of us think we have something to offer in that debate, not if you bypass the committee and go straight to the floor. I object to that process. That is a process at least this Senator is going to be very reluctant to support. I don't like bypassing the committee process. I don't like introducing things that are totally extraneous to the House bill or the Senate bill and putting them in conference. I may support those provisions, but I don't think that is a good way to legislate.

I am bothered by the fact the Senate is not working. I am bothered by the fact we did not pass a budget this year for the first time since 1974. I am bothered by the fact that we are yet to pass and send to the President any appropriations bills other than a 1-week continuing resolution. I am bothered by the fact we didn't do the energy bill right. We didn't do prescription drugs right. We didn't get it done. And I am bothered by the fact I look at two-thirds of this bill and I say: Wait a minute, where did this come from, even though they may be perfectly acceptable provisions.

Some might say we have done it before. That is true. But we also have rules against doing it. I believe the rule would be upheld. I believe these were extraneous to the conference. So I think rule XXVIII would be upheld. We may find out. I haven't decided to make that point of order. I am letting my colleagues know the rule is on there for a purpose. We should follow legislative procedure. We should abide by the rules. Unfortunately, we have not done so.

I see we are going to create 20 new judgeships. I guess I am all for that, but I look at several outstanding judges, 47 of whom are yet to be voted on, 7 of whom—I just mention 7—have waited for a year and haven't even had a hearing, 2 of whom have had a hear-

ing, Miguel Estrada and Michael McConnell, and we don't know if they are going to get a vote in the committee or not.

I think every one of the 12, I believe—or the 11 that were nominated on May 9 are entitled to a vote. People can vote up or they can vote down, they have that right. But I think to deny them even a hearing after 510 days is not fair, especially when you look at the qualifications of somebody like John Roberts, who has argued 37 cases before the Supreme Court, and he is yet to have a hearing; or Miguel Estrada, who has argued 15 cases before the Supreme Court, yet to have a hearing. Michael McConnell argued 10 cases—I take it back. Miguel Estrada has had a hearing, so has McConnell. They just have not been voted on in the committee. It is not too late. We may only have a week and a half left in the session, so I urge the Judiciary Committee to move forward on Mr. McConnell and Mr. Estrada and give these fine individuals, who have very distinguished reputations, distinguished legal careers, give them a vote in the Judiciary Committee and on the floor of the Senate.

I am confident both would be confirmed, both would be confirmed overwhelmingly and would make outstanding jurists for many years to come. I urge the Judiciary Committee to do that. I hope it will happen in the next few days.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

THE NEW JERSEY ELECTION

Mr. SANTORUM. Mr. President, I rise briefly to express my disappointment and dismay at what is going on in the neighboring State to Pennsylvania—New Jersey. What we are seeing play out in New Jersey is not something that, as an elected official, I find particularly ennobling for public officials. This is not something that gives people a whole lot of confidence in the political process in which we are engaged.

It is obvious some are trying to change the rules right at the end of the game, and in a way to advantage one political party. I find that very disconcerting. I find it potentially—as the New Jersey Supreme Court contemplates what they are going to do in this case, seeing the precedent that could result, it could result in a lot of ridiculous things happening at the end of a lot of elections. If you find a candidate behind, you simply change horses right at the end. Instead of having the people decide, you have the courts decide.

Remember just 2 years ago a lot of people were gnashing their teeth saying elections should not be decided by the courts. They should be decided by the people on the ballot. Here we have a situation where there are people on the ballot, and now we are having people go to court to change that ballot.