

than \$100,000 to defend our position, so every year when the formula kicks in and the directors' compensation is increased, the lawyer files his lawsuit, we send him a check for \$100,000, the lawsuit goes away, and we forget this until the next year.

That is extortion, plain and simple. Yet the general counsel would say, with some accuracy, the shareholders are better served if we simply pay him his \$100,000 than if we go to court and defend ourselves. Even though we would win, we would end up paying \$200,000 or \$250,000 or some number like that. So, he said, we have come to the conclusion the best thing to do for the shareholders is simply settle this class action lawsuit every year for \$100,000. The lawyer knows we will do that. So every year he files the lawsuit, we send him the check, the plaintiffs in whose behalf he is suing get nothing because his legal fee for filing the suit is \$100,000, and we simply go through this charade every year.

I am happy to report that this particular lawyer, as I understand it, decided to do this in some other instances and Merrill Lynch, the large brokerage firm, took him to court. They spent close to \$1 million in legal fees proving he was wrong and, furthermore, proving he had acted in a frivolous manner and ultimately put him out of business. The shareholders of Merrill Lynch were paying for an action that benefited the shareholders of the company on whose board my father sat, and many others.

We can be grateful that Merrill Lynch was willing to accept that financial burden in order to put a stop to this practice. But it demonstrates that standing on the floor of the Senate and deciding how valuable class action lawsuits are does not properly address the problem that this, and similar legislation, has sought to solve.

I wanted to add that personal experience to the debate that has been going on here so anybody who is following the debate will understand that it is not a question of whether one should allow class action lawsuits. It is not a question of whether plaintiffs are entitled to relief as a result of joining a class. It is a question of cleaning up abuses that are carried on by lawyers who say, in the words of one of them: I have a perfect law practice. I have no clients.

They file class action lawsuits on behalf of classes, but they are not in fact real clients. The lawyers benefit, ultimately to the detriment of the shareholders of the companies that are being sued. These shareholders are individuals. We are not talking about companies as if they were abstract entities. They are individuals who are being hurt by improper practices. Those are the kinds of practices this legislation seeks to resolve.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### EXECUTIVE SESSION

#### NOMINATION OF MARGARET CATHARINE RODGERS, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA

The PRESIDING OFFICER. Under the previous order, the hour of 5:15 p.m. having arrived, the Senate will proceed to executive session to consider Executive Calendar No. 401, which the clerk will report.

The legislative clerk read as follows: Nomination of Margaret Catharine Rodgers, of Florida, to be United States District Judge for the Northern District of Florida.

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a vote on the confirmation of the nomination.

Mr. THOMAS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Margaret Catharine Rodgers, of Florida, to be United States District Judge for the Northern District of Florida? The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from Texas (Mr. CORNYN), the Senator from Tennessee (Mr. FRIST), the Senator from Nebraska (Mr. HAGEL), the Senator from Texas (Mrs. HUTCHISON), the Senator from Indiana (Mr. LUGAR), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Missouri (Mr. TALENT) and the Senator from Virginia (Mr. WARNER) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from New York (Mr. SCHUMER) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) would each vote "yea".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 82, nays 0, as follows:

[Rollcall Vote No. 401 Ex.]

YEAS—82

Akaka	Dayton	Lincoln
Alexander	DeWine	Lott
Allard	Dodd	McCain
Allen	Dole	McConnell
Baucus	Domenici	Miller
Bayh	Dorgan	Murray
Bennett	Durbin	Nelson (FL)
Bingaman	Ensign	Nelson (NE)
Bond	Enzi	Nickles
Boxer	Feingold	Pryor
Breaux	Feinstein	Reed
Brownback	Fitzgerald	Reid
Bunning	Graham (FL)	Roberts
Burns	Graham (SC)	Rockefeller
Byrd	Grassley	Santorum
Campbell	Gregg	Sarbanes
Cantwell	Harkin	Sessions
Carper	Hatch	Shelby
Chafee	Hollings	Smith
Chambliss	Inhofe	Snowe
Clinton	Inouye	Specter
Coleman	Jeffords	Stabenow
Collins	Johnson	Stevens
Conrad	Kennedy	Sununu
Corzine	Kohl	Thomas
Craig	Kyl	Voinovich
Crapo	Leahy	
Daschle	Levin	

NOT VOTING—18

Biden	Hutchison	Mikulski
Cochran	Kerry	Murkowski
Cornyn	Landrieu	Schumer
Edwards	Lautenberg	Talent
Frist	Lieberman	Warner
Hagel	Lugar	Wyden

The nomination was confirmed.

Mr. HATCH. Mr. President, I am pleased today to speak in support of Margaret Catharine Rodgers, who has been confirmed to the United States District Court for the Northern District of Florida.

Judge Rodgers has had an impressive legal career. After graduating magna cum laude from California Western School of Law, she clerked for Judge Lacey Collier on the U.S. District Court for the Northern District of Florida. She then entered private practice with the Pensacola law firm of Clark, Partington & Hart as an associate. After 4 years, she went to work for the West Florida Medical Center Clinic as its general counsel and director of human resources. She then returned to private practice, where her areas of expertise focused on medical liability and employment law. Last year she was appointed as a Federal magistrate judge in the Northern District of Florida, which reflects the high regard in which the judges of that court hold her.

I am confident that Judge Rodgers will continue to serve with compassion, integrity, and fairness as a Federal district court judge.

Mr. LEAHY. Mr. President, the selection of Margaret Catharine Rodgers to be the nominee for the Northern District of Florida serves as an example of how the judicial nominations process should work. Judge Rodgers was interviewed and recommended by Florida's bipartisan judicial selection commission. This selection commission was created by Senators GRAHAM and NELSON in negotiated agreement with the White House and it has produced a consistent stream of talented and well-respected attorneys for the lifetime appointments on the district courts in Florida.

Judge Rodgers currently serves the Northern District of Florida as a magistrate judge. She received a "well qualified" rating from the American Bar Association, having proven her qualifications in the district in which she will serve, on the bench, in private practice, and in her community. Prior to becoming a lawyer, Judge Rodgers served for several years in the United States Army and received several commendations for her service.

With tonight's vote on Judge Rodgers' nomination, the Senate will have confirmed a total of 165 judicial nominations of President George W. Bush. Despite all of the false charges of obstruction leveled by the White House and Republican Senators, we have now reached a historic level of confirmations of judicial nominations.

In less than 3 years, President Bush has now equaled the total number of judges appointed by President Reagan in his first 4 full years in office. Republicans tout President Reagan as the "all-time champ" in judicial appointments and yet he attained 165 confirmations at the conclusion of his first 4-year term in office, while President Bush has achieved the same benchmark in less than 3 years in office. President Reagan's entire first term saw a Republican Senate majority enabling the President to achieve that milestone. That Democrats in the Senate have cooperated with President Bush to exceed it is extraordinary and reveals the truth about the confirmation process. Only a few of the most extreme of President Bush's judicial nominees have been blocked.

Of course, you will not hear Republican Senators or the White House tell the public today that this historic level of appointments has been reached, that President Bush has matched President Reagan's first-term judicial appointments with 15 months remaining in his term. You will not hear that truth from this administration. The Senate has opposed only the most extreme nominees and has moved cooperatively and expeditiously on less controversial nominees.

The record will reflect that Democrats have worked hard to balance the need to fill vacancies on the Federal bench with the imperative that the judges chosen will be fair to all people. With this confirmation, there are now only 40 vacant seats in the Federal bench. Until this year, this mark had not been reached in 13 years or during the entire Clinton administration, when more than 50 judicial nominees were blocked from receiving confirmation votes. Had we not authorized almost 20 judgeships last year, the vacancies might be in the 20's.

President Bush is on pace to appoint judges far in excess of those of any other President in American history. In fact, this President has had so many vacant seats to fill because Senate Republicans did such an effective job of blocking scores of Clinton nominees with impunity. When I became chair-

man of the Judiciary Committee in mid-2001, we inherited 110 vacancies. In a little more than 2 years since then Democrats and Republicans have worked together to confirm 165 judicial nominees of President Bush. The White House and the Republicans in the Senate refuse to declare themselves victorious in their efforts to appoint a historic number of judges chosen by the President. They insist on seeing the glass half empty, when it is nearly full to the brim. They refuse to take any steps to address the fact that fully 20 percent of President Clinton's judicial nominees were blocked from getting votes when Republicans controlled the Senate. In those 6 years, they allowed only 248 judicial nominees to be confirmed and blocked another 63. Today, in less than 3 years, President Bush has achieved what it took President Reagan four full years to achieve 165 judicial confirmations.

Nominations from bipartisan selection commissions can proceed expeditiously. Judge Rodgers received a committee hearing within weeks of her paperwork being completed and she will be confirmed less than a month after her hearing. Her confirmation could have occurred even sooner since she has been pending on the floor for several weeks but I am happy that the majority leader has decided to turn to her confirmation this afternoon.

Judge Rodgers' appointment to the district court in the Northern District of Florida will bring her legal career full circle since her first job out of law school was as a judicial clerk on this very court. I am pleased to cast a vote for her confirmation today and I congratulate Judge Rodgers and her family.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

Mr. NELSON of Florida. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Mr. President, am I in order to speak on the class action tort reform legislation?

The PRESIDING OFFICER. The Senator is in order.

#### CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED—Resumed

Mr. GRASSLEY. I am pleased that the Senate is finally reaching the point

of moving ahead with this very important legislation. We call this the Class Action Fairness Act of 2003 because, quite frankly, everything dealing with class action lawsuits—maybe I should not say everything because I admit there is a very important role in some instances for class action lawsuits, but the way the regime is working out now is very unfair, particularly in instances where consumers get practically nothing and lawyers representing the class get millions.

That is not an occasional happening. That is happening quite regularly. So the current class action system is rife with problems which undermine the rights of both the plaintiffs and defendants alike; hence, our legislation. Class members are often in the dark about their rights, with class lawyers driving lawsuits and driving the settlement. Class members receive court and settlement notices in hard-to-understand legalese. Many class action settlements only benefit the lawyers, with little or nothing going to the class members. We are all familiar with class action settlements where the plaintiffs received coupons of little value or no value, and the lawyers received all the money available in the settlement agreements.

More and more, we are seeing lawyers bringing frivolous lawsuits which are of no real interest to class members but are just a bonanza of quick and easy legal fees for the class lawyers because companies want to settle those cases rather than expend lots of money in frivolous litigation defense.

I have been invited into class action lawsuits. One gets a notice in the mail, probably because they did business with a particular company. Maybe it is because I am in agriculture and a family farmer that I might get some notices of this, but I can speak to the fact that—and obviously I hope people know I am not a lawyer, but the legalese that comes in these notices informing you why you might possibly be a member of a class, or you might possibly benefit, quite frankly I do not give those notices much consideration. Maybe I should. Maybe there is a jackpot out there that I could get something out of. I do not know.

It really is not very inviting to the people who may have been injured. Even if it is inviting, and they join it and they win, they could get a coupon; whereas the lawyers are going to get millions of dollars.

In addition to current class action rules, the current ones are such that a majority of the large nationwide class actions can only proceed in our State courts, when these are clearly the kinds of cases that should, in fact, be heard in Federal courts. It makes sense that these class action cases have the opportunity to be heard in Federal courts because these cases involve lots of money, citizens from all across the country, and issues of nationwide interest.

To further compound the problem, the present rules are easily gamed by