

That is what I believe a judge ought to do. That is the ideal of American law. It is very important that we maintain that.

When we have nominees held up explicitly to affect the outcome of a case that might come before them, a very important and famous case, indeed perhaps the most significant case that year—maybe even in the last half-dozen years—to be shaped and blocked simply because of that case is bad. In fact, after the case was over, Judge Gibbons was confirmed 95-0 by this body. There never was any objection to her other than they were afraid it would affect the outcome of the case.

There are vacancies on the Sixth Circuit. The President is empowered to make the appointments. He is empowered to make the appointments according to the legal philosophies and principles he announced to the American people when he ran for office. President Bush declared that he was going to nominate and fight for judges who would follow the law, not make law, who would show restraint, who would be true to the legitimate interpretation of the statutes and the Constitution, not using that document to further promote their own personal agendas. That is what he has done, and that is what Judge Saad's record is. He is not going to impose his values on the people of the Sixth Circuit. That is not his philosophy of judging. His philosophy is to follow the law, not to make the law. We have no fear of that kind of judge. We ought to confirm him.

The people of this Nation need to know that the Democratic leader, Senator DASCHLE, and the Democratic machine is time after time mustering 40 votes to block these nominees from even getting an up-or-down vote. In fact, when we vote on cloture to shut off debate and we have to have 60 votes, we are constantly getting 53, 54, 55 votes for these nominees, which is more than enough to confirm them, but we cannot shut off the debate and get an up-or-down vote. So by the unprecedented use of the filibuster, these judges are not getting an up-or-down vote. I say to the American people, they need to understand this. I believe the rule of law in this country is jeopardized by the politicization of the courts. We must not allow that to happen. I believe the collegiality and traditions of this Senate are being altered. There is no doubt we have not had filibusters of judges before. In fact, about 4 years ago, Senator LEAHY was denouncing filibusters when President Clinton was in office, and now he is leading it. The ranking member of the Judiciary Committee is leading a host of filibusters. It is an unprincipled thing.

I remember Senator HATCH, as chairman of the Judiciary Committee and a guardian of the principles and integrity of the Senate, on many occasions told Republicans when they said, Well, we do not like this judge, we ought to filibuster him, why do we not filibuster

him, and he said, You do not filibuster judges; we have never filibustered judges; that is the wrong thing to do. And we never filibustered President Clinton's judges.

I voted to bring several of them up for a vote and cut off debate even though I voted against those judges because they should not be on the bench. I did not vote to filibuster the judge, and I think that is the basic philosophy of this Senate.

I hope we will look at this carefully. These nominees are highly qualified. They are highly principled. Many of them have extraordinary reputations, like Miguel Estrada, Judge Pickering, Bill Pryor, and Priscilla Owen from Texas, a justice on the Texas Supreme Court who made the highest possible score on the Texas bar exam. These are highly qualified people who ought to be given an up-or-down vote. If they were given an up-or-down vote, they would be confirmed just like that.

Unfortunately, we are having a slowdown, unprecedented in its nature. If this does not end and we cannot get an up-or-down vote on these judges, those of us on this side need to take other steps. And we will take other steps. We need to fight to make sure that the traditions of this Senate and the constitutional understanding of the confirmation process are affirmed and defeat the political attempts to preserve an activist judiciary that our colleagues, it appears, want to keep in power so that they can further their political agenda, an agenda they cannot win at the ballot box.

I yield the floor, and I suggest the absence of a quorum.

THE PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

OMNIBUS SPENDING BILL

Mr. BYRD. Madam President, there are only 22 legislative days left in this fiscal year. The Senate seems to be frittering away those precious days. To date, the Senate has only passed one appropriations bill, the Defense bill. Only four bills have been reported from the Senate Appropriations Committee.

The House has passed nine appropriations bills, but apparently the Senate would rather work on political messagemaking than to take care of the Nation's vital business. So I fear, once again, that the Senate Republican leadership is setting a course for a massive omnibus spending bill. That is what it looks like. That is what we are going to do, have a massive omnibus spending bill, in all likelihood.

This year, with the failure of the Senate Republican leadership to even bring the Homeland Security bill before the Senate, the Omnibus appropriations bill may include as many as 12 of the 13 annual appropriations bills. That is very conceivable to ponder.

On July 8, Homeland Security Secretary Tom Ridge and FBI Director Robert Mueller announced that another terrorist attack is likely before the November elections, yet the Homeland Security appropriations bill, which the committee reported 4 weeks ago, has not even been presented to the full Senate for its consideration. What is wrong? What is wrong with this picture? Talk about fiddling while Rome burns. The flames are all around us.

The Senate Republican leadership is setting the stage for another one of these massive spending bills that may be brought up in the Senate in an unamendable form. And one shudders to think what will go on behind closed doors. Who among the 100 Senators will be in the meetings that produce a massive bill that appropriates over \$400 billion for veterans, education, homeland security, highways, agriculture, and the environment? Who among the 100 Senators will be in the meetings when decisions are made about including provisions on drug importation, gun liability, farm bill issues, nuclear waste storage at Yucca Mountain, overtime rules, or on the outsourcing of government services? Does anybody know?

And, who knows what surprises, that were never debated or even contemplated in the Senate, will find their way into such an omnibus? What kind of interesting bugs will crawl into this big bad apple of a bill? I cannot tell you how many Senators will be in the room, but I can assure you of one thing. The White House will be there. You can bet on that. They will be there with their pet projects and their pet peeves and their opportunities to move certain items into their favorite States—doing their bidding, legislating right along with the Senators. They will be there. White House bureaucrats and soothsayers will suddenly become legislators for a day, or perhaps several days.

That is not the way our Constitution contemplated the writing of appropriations bills. The Framers believed that Congress ought to have the power of the purse. This White House would like to have it. They would like very much to have it. But all of those constitutional niceties get blurred and blended when it comes time to deal on Omnibus appropriations bills. The checks and balances gets thrown out the window when it comes time to deal with Omnibus appropriations bills.

One could conclude that the only thing the President wants from the fiscal year 2005 appropriations bill is the Defense appropriations bill. That is the only thing the President would want from the 2005 appropriations process—the Defense appropriations bill.

On June 24, 2004, in its Statement of Administration Policy, the White House urged the Congress to pass the Defense bill before the start of the August recess. Why?

In February, the President did not ask for one thin dime, not one thin dime did he ask for as far as the costs

of the war in Iraq—nothing. Administration officials had the temerity to insist that the costs of the war were not knowable. Then suddenly, on May 12, 2004, the President saw the light and realized that he needed more money for the war in Iraq. It must have come to him in a sudden vision. So, like a teenage driver, he put the foot on the gas and insisted that the Congress give him a \$25 billion blank check for the escalating costs of his war in Iraq.

With the help of Senator STEVENS of Alaska, the blank check got canceled, but the defense conference report will include the \$25 billion in additional funds. The President will get the one thing he wanted out of this year's appropriations process; he will get the Defense appropriations bill.

So I must ask the American people, why is it the President has not sent messages to the Congress urging prompt action on the bill that funds the veterans health care system? I am sure the veterans are concerned about what is going to happen with respect to their needs.

Moreover, does the President not know that the bill that funds our Nation's schools is stuck in subcommittee? What about the appropriations bill that funds our highway system that has not yet been considered by the House or the Senate? In February, the President proposed to put a man on Mars, but the bill that funds the space program has not been marked up by either the House or Senate appropriations committees.

According to President Bush, Congress must urgently send him the Defense appropriations bill; but for all of the other appropriations bills, the attitude is *ho hum*; so what.

According to the administration, we are facing another terrorist attack. Are we not even going to debate whether a 5-percent increase for the Department of Homeland Security is enough?

Last year, we fell prey to a 7-bill omnibus, but at least the Senate debated as freestanding bills 12 of the 13 bills. Now we are down to only one debate this year on the Defense bill. That is one bill, and only one debate this year, on the Defense bill.

Where do we go from here on funding the needs of the people? One of the options that has been discussed by the Republican leadership is to pass the full-year continuing resolution and leave town, get out of town, catch the next train, all aboard. That is right. The exalted servants of the people may just decide to enjoy a summer vacation if some in the Republican leadership have their druthers. What does it matter if all of the Federal Government, except the Pentagon, operates on automatic pilot for a full year? Who needs guidance from the Congress on the priorities? Who needs careful scrutiny of Federal programs? What about the new initiatives? Shouldn't they be under careful scrutiny? Shouldn't questions be asked and questions answered?

Let me give you, my colleagues, a few examples of what would happen

under a full-year continuing resolution. If that is what you want, I tell you what you are going to get.

If the Senate Republican leadership refuses to allow the Senate to debate the Homeland Security appropriations bill, important funding in new programs would not be available to the Department.

As we all know, on March 11, 2004, nearly 200 people were killed by a series of bombs detonated on the transit system in Madrid, Spain. The Department of Homeland Security responded by sending out a list of security recommendations for mass transit and rail systems in the United States. These recommendations included moving garbage cans and asking commuters to be more alert to suspicious people and packages, like unattended backpacks. However, despite my efforts, no moneys were approved for fiscal year 2004 for mass transit or rail security. Are we comatose in the Senate? Perhaps we better reach back in our desks somewhere and get our living wills.

On an average workday, 32 million people travel on mass transit. Get that, 32 million people travel on mass transit on an average workday. However, under a continuing resolution, there would be no funding to help secure our mass transit and rail systems. There would be no funds for additional law enforcement presence, no funds for additional K-9 teams, no funds for additional surveillance, no funds for additional public education about the threat. Is that OK with the Senate?

Following the tragic events of September 11, the administration established a firm goal for the number of Federal air marshals so that a high percentage of critical flights could be protected. The exact number of air marshals is classified, but the fact is, the Federal air marshals program has never reached the staffing level called for in the wake of the September 11 attacks.

Instead, the White House has allowed the number of air marshals to fall by 9 percent, falling far below the goal. As air marshals leave the program, budget constraints prohibit the hiring of replacements. The number of air marshals continues to dwindle and the number of critical flights they are able to cover remains on a steady downward spiral. If forced to operate under a continuing resolution, the number of air marshals protecting domestic and international flights could fall by another 6 percent, putting Americans in greater danger. How can we contemplate such irresponsibility? Doesn't public safety count?

How about funding for our Nation's schools? Two and a half years ago the President promised to leave no child behind. The No Child Left Behind Act authorized \$20.5 billion in fiscal year 2005 for title I, the Federal program designed to help disadvantaged students in kindergarten through high school, those students who are most at risk of

being left behind. A continuing resolution would freeze title I funding at just \$12.3 billion. That would leave behind 2.7 million students who would not receive the title I services that were promised to them in the No Child Left Behind Act.

A continuing resolution would also freeze funding for special education. Two months ago, the Senate voted overwhelmingly by a vote of 96 to 1 to authorize a \$2.3 billion increase for the Individuals With Disabilities Education Act—better known, perhaps, as IDEA—in fiscal year 2005, and fully fund the law within 7 years. A CR would put the lie to that pledge.

As candidate for President in 2000, President Bush said:

College is every parent's dream for their children. It's the path to achievement. We should make this path open to all.

But, my dear friends, under the Bush administration, the cost of tuition has gone up by 26 percent, making it harder and harder for low- and middle-income students to pursue that dream.

The Pell grant: A maximum Pell grant now covers only 34 percent of the average annual cost of college compared to 72 percent in 1976. Under a continuing resolution, there would be no increase in the maximum Pell grant now set at \$4,050. There would be no increases for the College Work-Study Program or for other campus-based aid programs. So much for dreams, so much for promises, so much for empty talk.

For the construction and restoration of our Nation's highways and bridges, a long-term continuing resolution would stifle the flow of billions of new dollars going to our States to improve safety conditions, minimize congestion, and create badly needed jobs.

Just this past February, more than three-quarters of the Senate, 76 Senators, approved a surface transportation bill that called for an overall commitment of highway funds for fiscal year 2005 of \$37.9 billion. Under a long-term continuing resolution, highway funding would be \$4.25 billion less than that amount, a \$4.25 billion shortfall. That difference represents more than 200,000 jobs across America, jobs that are desperately needed all across our States. But the Senate is in gridlock, much like the gridlock on our Nation's highways.

Our Nation's military is serving gallantly in Iraq and Afghanistan, but under a continuing resolution the Veterans Health Administration, unbelievably, would get drastically reduced health care services for our fighting men and women. Approximately 237,000 veterans would not be able to receive care, and veterans outpatient clinics would schedule 2.6 million fewer appointments. The waiting list for veterans seeking medical care would grow to over 230,000. What a way to treat our brave men and women. Shabby and shameful are the two words that come to mind.

Al-Qaida operatives are in the United States preparing for another terrorist

attack. The FBI must mobilize to find those terrorists before they attack us. But a full-year continuing resolution would force the FBI to freeze all hiring in fiscal year 2005. That would result in the FBI losing 500 special agents and negating the proposed increase of 428 special agents. Nor would the FBI be able to fund any of the new initiatives proposed in the fiscal year 2005 budget request, including resources for the new office of intelligence counterterrorism investigations, counterintelligence, and fighting cyber crime.

Another casualty of a full-year continuing resolution would be programs to combat HIV/AIDS, particularly in eastern Europe and Asia where the epidemic is spreading out of control. Only one in five people worldwide have access to HIV/AIDS prevention programs. Yet a continuing resolution would reduce funding for those programs by almost half a billion. That means there would be hundreds of thousands of new infections of the deadly virus—infections that could have been prevented, lives that could have been saved.

The list goes on and on and, like Tennyson's book, goes on. Members of this Congress have a duty and a responsibility to the American people. They do not want us to approve massive omnibus spending bills that no one has bothered to read. They do not want us to pass mindless continuing resolutions that put the Government on automatic pilot and their safety on the line. They do not want us to cash our own paychecks without doing the work we were sent here to do.

We are paid to debate legislation. We are paid to make careful choices on behalf of the people. The elections are coming, and if we are not going to do our work, then we should not claim the title of Senator. Just like Donald Trump, come November, the American people might decide to send us a very straightforward message: You're fired.

Last week, the Republican leadership jammed into the defense conference report a provision "deeming" the level of spending for fiscal year 2005 at the level in the budget resolution conference report. It seems now we are "deeming" our way through budget debates. "Deeming"—this provision was not contained in the Senate or House version of the Defense bill. It was not debated here on the Senate floor. Yet this innocuous-sounding "deeming" provision will have far-reaching consequences. That provision will result in appropriations bills that inadequately fund homeland security, education, veterans, transportation, and other programs to meet domestic needs. And the consequences are not just on paper. The American public is being cheated year after year by the steady erosion of money available to fund the public's priorities. They are being "deemed" down the river.

This year, even while the directors of Homeland Security, the FBI, and the CIA are warning us of al-Qaida in our midst, we still are unaccountably and

stubbornly sitting on the Homeland Security appropriations bill as if in total defiance of the dangers to our country and to the people's safety.

None of this is the fault of our able Appropriations Committee chairman, Senator TED STEVENS. Early on, I encouraged Chairman STEVENS to move 13 freestanding, fiscally responsible appropriations bills through the committee and on to the Senate floor. Senator STEVENS instructed his 13 subcommittee chairmen to produce balanced and bipartisan bills; however, the Senate Republican leadership has refused to free up floor time for the appropriations bills.

I will not be a party to such chicanery, and I implore the leadership of this body to stop the games and stop the politics. And I ask the majority leadership to set aside the pending business and proceed to the consideration of Calendar Order No. 588, H.R. 4567, the fiscal year 2005 Homeland Security appropriations bill.

Madam President, I yield the floor.

Mrs. FEINSTEIN. Madam President, I echo the comments of Senator BYRD, the ranking member of the Appropriations Committee. While I do not have the perspective of his years of service in the Senate and on the Appropriations Committee, I share his concern about the breakdown we are seeing in this year's appropriations process.

There are only 2 days left before the Senate leaves for an extended August recess. Yet the Appropriations Committee has reported out only 4 of the 13 appropriations bills we must pass this year. The Senate has passed only one Appropriations bill—the Defense Appropriations bill. This is a dereliction of our primary duty in the Senate, funding the functions of Government.

The blame for this situation does not go, in my view, to the Appropriations Committee. In the limited work the committee has done this year, it has operated in an efficient, bipartisan manner. But we all know that the committee has been hampered by the failure to enact a budget resolution.

A budget is a clear articulation of priorities. We are having these problems because of a failure to prioritize, or because of skewed priorities. As we all know, the Congressional Budget Office is projecting a \$477 billion deficit in fiscal year 2004.

But some in the Congress continue to believe that more tax cuts should be the priority in this Congress. And they refuse to subject these tax cuts to the discipline of pay-as-you-go rules, which would require offsetting revenue increases, or spending cuts.

They insist that we can balance the books by "controlling" nondefense, nonhomeland security, discretionary spending. Yet, no one has shown any inclination to significantly cut discretionary spending. Just the opposite. As BILL YOUNG, the chairman of the House Appropriations Committee notes:

No one should expect significant deficit reduction as a result of austere non-defense

discretionary spending limits. The numbers simply do not add up.

The notion of balancing the budget, while further reducing revenue, is simply wrong-headed. Or, as Chairman YOUNG succinctly puts it, "the numbers simply do not add up."

The Senate is scheduled for 19 legislative days after August. It does not appear that there is much hope for completing our appropriations work in that time. Indications in the media from the chairman and from the Republican leadership are that we will be faced with moving an omnibus appropriations bill when we return, possibly with some bills held over for a lame-duck session of Congress. That is a terrible way to do business, and I sincerely hope it does not come to that.

In the remaining 2 days before we recess, I am hopeful that we can at least take up my subcommittee's bill, the military construction bill. The subcommittee chairman, Senator HUTCHISON, and I have worked well together to craft a good bill with the support of Senators STEVENS and BYRD. I believe that it deserves the support of the full Senate.

And when the Senate reconvenes, in September, I hope that we on the Appropriations Committee will work efficiently, and on a bipartisan basis, to report freestanding bills to the Senate.

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

The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. 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 remarks of Mr. CORNYN pertaining to the submission of S. Res. 413 are printed in today's RECORD under "Submitted Resolutions.")

The PRESIDING OFFICER. The Senator from Michigan.

(Mr. CORNYN assumed the Chair.)

Ms. STABENOW. Mr. President, I rise today to express deep disappointment about what is taking place on the Senate floor in the cloture vote scheduled for tomorrow. For the past 3½ years, Senator LEVIN and I have been urging the Bush administration to work with us to develop a bipartisan solution regarding the Michigan nominees to the Sixth Circuit Court. We have met on several occasions with Judge Gonzales, the current White House counsel, and other White House staff, but the White House has rejected all of our efforts at a compromise. We also had numerous meetings with Chairman HATCH and testified before the Senate Judiciary Committee several times on the need for a bipartisan solution.

Chairman HATCH had expressed a willingness to work with us and to work with Senator LEAHY on a bipartisan solution to this impasse, but it seems these efforts have been abandoned by Republican leadership in

favor of scoring political points before the party conventions.

I still believe the best way to end this impasse is to forge a compromise. I hope the Bush administration and the Republican leadership will not continue down this road of what appears to be politically motivated and partisan cloture votes instead of working with us to develop a fair solution. A "nay" vote on cloture will preserve potential negotiations toward the bipartisan compromise we have been seeking. A "yea" vote will destroy these efforts and, unfortunately, be a vote for preconvention politics.

Let me start by saying a few words about Judge Saad's nomination. Judge Saad is before us now. After listening to people in Michigan who have shared serious concerns with both Senator LEVIN and I, and having had an opportunity to review the FBI background materials, I have to say that I have serious concerns about Judge Saad's temperament and appropriateness for serving on this important bench. While I cannot go into specifics, I urge my colleagues to review the Judiciary Committee's FBI background materials for themselves.

Judge Saad's lack of fitness for this appointment is also evidenced in the record he has put together as it relates to his work on the Michigan Court of Appeals. Most troubling, perhaps, are his decisions and reversals in cases involving the application of the law in civil rights cases—particularly in sexual harassment cases.

His decisions also demonstrate hostility to the rights of whistleblowers. We know in this day and age, as we have learned through those who were courageous and came forward in the Enron and Halliburton cases, and others where employees have come forward, how important it is to be able to protect the rights of employees who see that something is wrong and they step forward. They are what we call whistleblowers.

His decisions also have been hostile to the rights of people who are injured. For example, in *Coleman v. State*, Judge Saad joined in deciding against the plaintiff in a sexual harassment case, which was later reversed by the Michigan Supreme Court. *Coleman*, a State prison employee, was subjected to comments by her supervisor about her allegedly provocative dress and to daily inspections of her clothing, after she was the victim of an attempted assault and rape by an armed prison inmate. She was the one who was questioned, as too often we hear as it relates to women who are told it was their fault, because of the way they dress, and that is why they were assaulted. The Michigan Supreme Court reversed the decision, holding that there was sufficient evidence for the victim to go to trial.

In *Haberl v. Rose*, Judge Saad dissented from the court of appeals' reinstatement of a jury verdict for the plaintiff who was injured by a Govern-

ment worker who was doing Government work but driving her own automobile.

In the complicated case, the majority found that Michigan's sovereign immunity statute was not applicable, since a more specific civil liability statute said that car owners are not immune from liability. Car owners have liability in these kinds of cases.

The dissenting Judge Saad stated that the sovereign immunity statute applied but the civil liability statute did not and, thus, the injured plaintiff could not recover.

Judge Saad was harshly criticized for his dissent by the majority of the judges, who essentially called him a judicial activist:

Indeed, it is the dissent that urges "rewriting" the statutes in question and advocates overstepping the bounds of proper judicial authority.

Based on these concerns, I do not believe Judge Saad has the necessary judicial temperament to serve a lifetime appointment—a lifetime appointment—on the Sixth Circuit Court of Appeals.

Mr. President, I wish to speak more broadly now about the process of bringing the Sixth Circuit nominees to the floor of the Senate. Senator LEVIN has spoken eloquently about the history of the Sixth Circuit nominees prior to my serving in the Senate. He has explained how two extremely well-qualified women—Judge Helene White and Kathleen McCree Lewis—failed to get a hearing before the Judiciary Committee for more than 4 years and 1½ years, respectively, during the previous administration.

In fact, if she had been confirmed, Kathleen McCree Lewis would have been the first African-American woman on the Sixth Circuit Court of Appeals.

Senator LEVIN and I are not alone in the view we hold that what occurred with respect to these nominees was fundamentally unfair.

On more than one occasion, Judge Gonzales, the current White House counsel, has acknowledged that it was wrong for the Republican-led Senate to delay action on judicial nominees for partisan reasons, at one point even calling the treatment of some nominees during the Clinton administration "inexcusable."

Senator LEVIN and I have repeatedly proposed to settle this longstanding conflict by appointing a bipartisan commission to make recommendations to the White House on judicial nominations.

Our proposal would be based on the commission that is set up and working just across Lake Michigan in Wisconsin. The State of Wisconsin commission has produced bipartisan nominees for both district and circuit courts since its inception under the Carter administration.

In fact, just recently, the Senate confirmed Judge Diane Sykes for a vacancy on the Seventh Circuit Court of Appeals. Judge Sykes, a Bush adminis-

tration nominee, was recommended by the bipartisan Wisconsin commission and had the support of both of her Democratic home State Senators.

This process works. The Wisconsin commission includes representatives from the Wisconsin Bar Association, the deans of the State's law schools, as well as members appointed by both Republicans and Democrats. They only recommend qualified candidates who have the support of the majority of the commission. The President then looks to the recommendations of the commission when making his nominations.

The Wisconsin commission's recommendations have always been followed by the President, regardless of political party. Again, this system has worked.

This type of commission preserves the constitutional prerogatives of both the President and the Senate. It allows the President to pick one of the recommended nominees and protects the Senate's advise and consent role.

Wisconsin is not the only State where this type of bipartisan commission works. In a similar form, it has worked in several other States, including Washington, California, and Vermont.

Unfortunately, the White House continues to reject this proposal from Michigan, despite having agreed to similar commissions in other States with other Democratic Senators.

Senator LEVIN and I are interested in finding a real bipartisan solution to this problem. We have stated on numerous occasions that we are willing to accept the commission's recommended nominees, even if they do not include Helene White and Kathleen Lewis, or any other person we would choose if it were up to us.

Instead of divisive cloture votes, let's look to the future and restore civility to this process. It is time to do that with the Sixth Circuit.

I hope we can still accomplish this and that the Bush administration and Chairman HATCH will work with us to develop a fair compromise to this longstanding problem.

Let me take a moment to reiterate this is not about being unwilling to fill vacancies. As other colleagues have indicated, we have, in fact, confirmed 198 judicial nominees of this President, and I have voted for the overwhelming majority of those nominees. This is more judicial nominees than were confirmed for President Reagan in all 4 years of his first term, more nominees than were confirmed for first President Bush during his 4-year Presidency, and for President Clinton in all 4 years of his second term. Mr. President, 100 judges were confirmed in the 17 months of the Democratic Senate majority.

So under Democratic control, we confirmed 100 judges, and we were only in the majority for 17 months of the last almost 4 years. Now, 98 more judges have been confirmed in the 25 months of Republican leadership. In other words, the Democrats were in the majority less time and confirmed more

judges for this President during the last 3½ years. So this is not about being unwilling to support filling judgeships, but it is about a very specific concern about what has been happening in Michigan and the lack of willingness of the administration to work with both Senators to fulfill our equal responsibilities of being able to pick the best people to serve our great State for a lifetime appointment.

These are not Cabinet appointments of this President. They are lifetime appointments. The reason the Framers of the Constitution divided the responsibility—half with the President and half with the Senate, as we know—is because this is a third branch of Government with lifetime appointments, and it is very important there be the maximum amount of input, balance, and thoughtfulness brought to this process.

Unfortunately, regarding the Sixth Circuit, until we have a fair solution, I believe I have no other option than to oppose this cloture vote and to urge my colleagues to do the same.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Parliamentary inquiry, Mr. President. What is the business before the Senate?

The PRESIDING OFFICER. The nomination of Henry Saad to the Sixth Circuit Court of Appeals is the pending business.

Mr. HARKIN. I thank the Chair.

UNITED STATES-MOROCCO FREE-TRADE
AGREEMENT

Mr. HARKIN. Mr. President, I wish to take a few minutes of the Senate's time to discuss the reasons behind my decision to vote against the Morocco free-trade agreement implementing legislation which the Senate passed earlier today. I want to make very clear that my vote was not in any way against a free-trade agreement with Morocco. My vote, as was my vote against the Chilean free-trade agreement, was a protest against the continued determination by this administration to undermine and to do away with provisions that address labor issues, especially the worst forms of child labor, that we had contained in the Jordan free-trade agreement and relevant provisions in the Generalized System of Preferences.

In fact, I welcome this affirmation of the strong economic and political relationship that exists between the United States and the Kingdom of Morocco which can be strengthened by this agreement. I recognize this legislation is almost certain to pass the House this week very easily, and the United States-Morocco Free-Trade Agreement will go into effect next January.

The Kingdom of Morocco is a politically moderate Muslim nation that has been a long-time friend of the United States, a friendship that has been demonstrated most recently with their support in the aftermath of the tragedy of September 11, 2001.

Morocco has been a valuable partner in fighting the global war on terror,

and so it is appropriate for the U.S. Government to reciprocate that support with a bilateral free-trade agreement so long as it leads to expanded economic opportunities for both partners.

Once in place, this agreement will generate significant economic benefits to both Morocco and the United States, and with Morocco's strategic position on the continent of Africa and easy access into Europe through the Strait of Gibraltar, it could serve as a gateway to even more markets.

This bilateral free-trade agreement could also serve as the foundation for a far wider free-trade agreement with the entire region of the Middle East and northern Africa.

With respect to agriculture, this free-trade agreement provides modest but clear opportunities to a wide range of U.S. commodities.

The opportunities provided in the free-trade agreement in non-agricultural goods and services will be substantial as well, and it reflects the determination of the Government of Morocco to modernize their economy to the benefit of the people of Morocco.

So count me as a friend of Morocco. Morocco has been a strong ally of the United States. It is a moderate nation. I have had the privilege of visiting Morocco on at least two occasions, maybe more, and I have a great deal of respect and admiration for the Moroccan people. Nonetheless, I decided to vote against it because I intend to call attention to the decision of U.S. negotiators to retreat from the provisions under the Generalized System of Preferences that requires the U.S. Government to monitor our trading partners on their progress in meeting international standards on the use of child labor, and these provisions in the GSP also provide leverage to encourage those countries to continue to make progress by permitting sanctions to be imposed against those who backtrack.

The Bush administration has taken a weak stand toward child labor in this latest trade agreement. In 2000, I, along with then-Senator Helms of North Carolina, authored an amendment that unanimously passed the Senate that extended GSP benefits to countries that took steps to implement ILO Convention 182 on the worst forms of child labor, and it mandated that the President report on the progress of these countries. If the President determined that countries were not taking steps to implement the ILO Conventions, benefits would be withheld.

The trade agreement that we passed with Chile earlier, and with Morocco, takes a step backward. As I said at the time, I first proposed we have a free-trade agreement with Chile in 1993, 11 years ago. So I had mixed emotions when I had to vote against the free-trade agreement with Chile because Chile's Government is making great progress. But this administration sought to undermine what we had achieved in the Jordanian free-trade

agreement and in the Generalized System of Preferences.

Morocco does have problems with child labor. Although not employed in regular manufacturing, child labor is commonly used in cottage industries, such as rug making, and many Moroccan middle-class households use children as domestic servants. The Government of Morocco did pass new labor laws last month which included raising the minimum working age from 12 to 15 and reducing the workweek from 48 to 44 hours, but a recent U.S. Department of Labor report indicates that enforcement of existing laws is severely constrained.

So while Morocco has been a good friend, while they are trying to make progress, I think our trade laws ought to bolster that progress in doing away with the worst forms of child labor.

I take into account these considerations when I determine whether I will support a given trade agreement, as well as the economic gains that may be generated.

As in the case of Chile, my concern about the lack of direct protection against the use of child labor was the overriding factor, so I voted no on the free-trade agreement with Morocco. Again, as I say, I do not want this to be misinterpreted in any way as any lack of support for our mutual friendship and the continued development of relations between the United States and Morocco.

APPROPRIATIONS

Mr. HARKIN. I was watching on the monitor when Senator BYRD was recently on the floor talking about the lack of considering appropriations bills. In 2 days, we are going to adjourn for recess. What do we have to show for it? By this point, the Senate should have passed most, if not all, of the 13 appropriations bills, but this year under the Republican leadership we have only passed one, the Defense bill. We have not even debated the 12 others, much less put them to a vote.

Why is that? Is it because we are so busy in the Senate that we cannot debate these? Hardly. We spent days talking about judges who stand no chance of being confirmed; days on an amendment to ban gay unions that everyone knew would not pass, could not even get a majority vote, let alone 67 votes needed for a constitutional amendment. We spent weeks on a class action bill because Republican leadership did not want to consider amendments on which they thought they might lose.

Meanwhile, the Senate leadership has taken no action on increasing the minimum wage or extending unemployment benefits that could really make a difference for hard-working Americans.

The highway bill, which would create thousands of jobs, is now almost a year overdue, hung up by a veto threat of the White House. The bill to authorize Corps of Engineers projects that are important to farmers in my State was passed by the committee a month ago. There is no sign of any consideration in the Senate.