

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

#### JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, as I listened yesterday to the partisan rhetoric we continue to hear from Senate Republicans on nominations, I am disappointed that the Republican leader is ignoring the majority leader's statement from last May 10.

Today is April Fools' Day. I do not think the American people are fooled or amused by continued partisan bickering over nominations. Indeed, with a massive subprime mortgage crisis that has left so many Americans in dire straights, fearful of losing their homes, the Republican efforts to create an issue over judicial nominees is misplaced. In fact, I have been working hard to make progress and have treated this President's nominees more fairly than Republicans treated those of President Clinton. Judicial nominations are not the most pressing problem facing the country. Indeed, we have worked hard to lower vacancies to the lowest levels in decades. We have cut circuit vacancies in half.

It should be no surprise that the administration would rather focus on having a partisan political fight than the news that, in February, the United States lost 63,000 jobs. To make up for those and other job losses in recent months thanks to this President's policies, this country would need to create 200,000 jobs every month. This administration is apparently more worried about the jobs of a handful of controversial nominees, many without the necessary support of their home State senators, than the loss of jobs by thousands of American workers.

Unemployment is up over 20 percent, the price of gas has more than doubled and is now at a record high average of over \$3.20, trillions of dollars in budget surplus have been turned into trillions of dollars of debt with an annual budget deficit of hundreds of millions of dollars, and the trade deficit has nearly doubled to almost \$1 trillion. Indeed, just to pay down the interest on the national debt and the massive costs generated by the disastrous war in Iraq—the fifth anniversary of which we tragically marked 2 weeks ago—costs more than \$1 billion a day. That is \$365 billion each year that would be better

spent on priorities like health care for all Americans, better schools, and fighting crime and treating diseases at home and abroad.

Perhaps the only thing that has gone down during the Bush Presidency is judicial vacancies. After the Republican Senate chose to stall consideration of circuit nominees and maintain vacancies during the Clinton administration in anticipation of a Republican Presidency, judicial vacancies rose to over 100. Circuit vacancies doubled during the Clinton years. Since I became Judiciary chairman in 2001, we have worked to cut those vacancies in half.

In the Clinton years, Senator HATCH justified the slow progress by pointing to the judicial vacancy rate. When the vacancy rate stood at 7.2 percent, Senator HATCH declared that "there is and has been no judicial vacancy crisis" and that this was a "rather low percentage of vacancies that shows the judiciary is not suffering from an overwhelming number of vacancies." Because of Republican inaction, the vacancy rate continued to rise, reaching nearly 10 percent at the end of President Clinton's term. The number of circuit court vacancies rose to 32 with retirements of Republican appointed circuit judges immediately after President Bush took office.

Then, as soon as a Republican President was elected they sought to turn the tables and take full advantage of the vacancies they prevented from being filled during the Clinton Presidency. They have been extraordinarily successful over the past dozen years. Currently, more than 60 percent of active judges on the Federal circuit courts were appointed by Republican Presidents, and more than 35 percent have been appointed by this President. The Senate has already confirmed three-quarters of this President's circuit court nominees, compared to only half of President Clinton's.

I was here in 1999 when the Republican chairman of the Judiciary Committee would not hold a hearing for a single judicial nominee until June. In contrast, we have scheduled 3 hearings on 11 nominees so far this year. We have a circuit nominee from Texas listed on the Judiciary Committee agenda this week. I wrote to the President during the last recess commending him for nominating someone for a Virginia vacancy to the Fourth Circuit who is supported by Senator WARNER and Senator WEBB, a Republican and a Democrat, and indicated that I would use my best efforts to proceed to that nomination as soon as the paperwork is submitted. I will ask that a copy of that letter be printed in the RECORD at the end of my statement. In that letter, I also informed the President that an anonymous Republican hold had prevented Senate confirmation of the President's nominees to be the Associate Attorney General, the No. 3 position at DOJ, and the Assistant Attorney General for the Civil Division.

Since the resignations of the entire top leadership at the Department of

Justice last year in the wake of the scandals of the Gonzales era, I have made restoring the leadership ranks at the Department a priority. Since September, the committee has held seven hearings on executive nominations, including a 2-day hearing for the Attorney General. The Attorney General and the new Deputy Attorney General have been confirmed. But for Republican delays in refusing to cooperate and make a quorum in February, and now the anonymous hold, the Senate would have confirmed two more high-level DOJ nominees.

The partisan rhetoric on nominations rings especially hollow in light of the progress we have made. Last year, the Senate confirmed 40 judges, including 6 circuit judges. The 40 confirmations were more than during any of the 3 preceding years with Republicans in charge. The Senate has now confirmed 140 judges in the almost 3 years it has been run by Democrats and only 158 judges in the more than 4 years it was run by Republicans.

We continue to make progress. Four district court nominations are pending on the Senate's Executive Calendar. I have mentioned the nomination to the Fifth Circuit that is pending on the Judiciary Committee's agenda this week. I have already announced and noticed another hearing this Thursday for four more judicial nominees, two from Virginia and two from Missouri, and for the nominee to be the Assistant Attorney General for the Office of Legal Policy. This will be the Judiciary Committee's fifth confirmation hearing this year.

With respect to the recent nomination of Steven Agee to a Virginia seat in the Fourth Circuit, it is regrettable that Justice Agee's nomination only comes after months of delay when the White House insisted on sending to the Senate the nomination of Duncan Getchell. That nomination did not have the support of either of the Virginia Senators and was withdrawn after the Virginia Senators objected publicly. In fact, the delay in filling that vacancy has lasted years because this President insisted on sending forward highly controversial nominations like William Haynes, Claude Allen, and Duncan Getchell.

In my letter to the President, I wrote that I expect the Judiciary Committee and the Senate to proceed promptly to consider and confirm Justice Agee's nomination with the support of Senator WARNER and Senator WEBB, just as we proceeded last year to confirm the nomination of Judge Randy Smith to the Ninth Circuit, once the President had withdrawn his nomination for a California seat and resubmitted it for a vacancy from Idaho. I urged the President to use the Agee nomination as a model for working with home State senators and Senators from both sides of the aisle. Time is running short.

Senate Democrats should not and have not acted the way Republicans did by pocket filibustering more than 60 of

President Clinton's nominees. I would rather see us work with the President on the selection of nominees that the Senate can proceed to confirm than waste precious time fighting about controversial nominees who he selects in order to score political points. I would also rather see the Senate focus on addressing the real priorities of the country rather than catering only to an extreme wing of the Republican base with controversial nominees.

Mr. President, I ask unanimous consent that the letter to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, March 20, 2008.

Hon. GEORGE W. BUSH,  
The White House,  
Washington, DC.

DEAR MR. PRESIDENT: I write again, as I did last November, to demonstrate my willingness to work constructively with you in accordance with the Senate's important role in the consideration of your nominees to high-ranking positions in the executive branch and to lifetime appointments on our Federal courts.

Since last September, the Senate Judiciary Committee has been hard at work seeking to help restore the Department of Justice. The leadership ranks at the Department of Justice were decimated by the scandals of the Gonzales era. The Judiciary Committee's hearing last week was the seventh hearing we have held since September on executive nominations. The Senate has proceeded to confirm a new Attorney General, a new Deputy Attorney General, and numerous other nominations to fill high-ranking positions at the Justice Department.

I regret to inform you that we were stalled last week in our efforts to fill two other critical positions at the Department, when an anonymous Republican hold blocked confirmation of Kevin O'Connor to be the Associate Attorney General, and Gregory Katsas to be the Assistant Attorney General in charge of the Civil Division. I was particularly disappointed with this unexpected development. We had worked hard to expedite these nominations, holding a hearing on the first day of this session of Congress. After a nearly month-long delay, when Republican Members of the Judiciary Committee effectively boycotted our business meetings in February, we were able to report these nominations to the Senate in early March. They were set for confirmation before the Easter recess, until the last-minute Republican objection stalled them. They join your nomination of Michael Sullivan to be the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives as among those stymied by Republican objections. I trust at any future White House event on the status of nominations you will point out that several of your high-level executive nominations are being stalled by Republican objections.

With respect to judicial nominations, I want to commend you for working with Senators Warner and Webb to identify a nominee from those they recommended to you to fill a Virginia Fourth Circuit vacancy.

Your previous nominations from Virginia, William Haynes, Claude Allen and Duncan Getchell, were controversial and did not proceed. Following your withdrawal of the Getchell nomination earlier this year, I urged you to work with the Virginia Senators. I now thank you for doing so.

I expect your nomination of Steven Agee to be considered promptly following completion of the necessary paperwork. I want to encourage meaningful consultation with Senators of both parties. Just as we proceeded last year to confirm your nomination of Judge Randy Smith to the Ninth Circuit, once you had withdrawn his nomination for a California seat and resubmitted it for a vacancy from Idaho, I expect the Judiciary Committee and the Senate to proceed to confirm Justice Agee with the support of Senator Warner and Senator Webb. I urge you to work with Senators from other states, as well, so that we might make progress before time runs out on your Presidency and the Thurmond Rule precludes additional confirmations.

Your judicial nominations have fared far better than those of your Democratic predecessor. Nearly 90 percent of your nominations have been confirmed to lifetime appointments. Approximately three-quarters of your circuit nominations, compared to little more than half of President Clinton's circuit court nominations, have been confirmed. We have succeeded in reducing overall vacancies and circuit court vacancies to as few as half as many as during President Clinton's term. With four more judicial nominations on the Senate's Executive Calendar and another pending on the Senate Judiciary agenda, I am proceeding to notice another hearing for judicial nominees for the week immediately following the Easter recess. That will be our fifth nominations hearing so far this year.

Respectfully,

PATRICK LEAHY,  
Chairman.

#### HONORING WALTER F. MONDALE

Mr. LEAHY. Mr. President, this weekend, Marcelle and I will attend an event at the University of Minnesota Law School to honor the life and career of Vice President Walter Mondale on the occasion of his 80th birthday which he reached in January.

Vice President Mondale is a valued friend whom I proudly consider one of my mentors in the Senate. As I reviewed materials for this weekend, I came across an editorial by Vice President Mondale that appeared in the Washington Post on July 27, 2007 entitled "Answering to No One." The editorial provides an excellent perspective on the Office of the Vice President and how that office evolved in recent history.

In order to remind all Senators and their staffs about this insightful article, I ask unanimous consent that the editorial be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD as follows:

ANSWERING TO NO ONE  
(By Walter F. Mondale)

The Post's recent series on Dick Cheney's vice presidency certainly got my attention. Having held that office myself over a quarter-century ago, I have more than a passing interest in its evolution from the backwater of American politics to the second most powerful position in our government. Almost all of that evolution, under presidents and vice presidents of both parties, has been positive—until now. Under George W. Bush and Dick Cheney, it has gone seriously off track.

The Founders created the vice presidency as a constitutional afterthought, solely to

provide a president-in-reserve should the need arise. The only duty they specified was that the vice president should preside over the Senate. The office languished in obscurity and irrelevance for more than 150 years until Richard Nixon saw it as a platform from which to seek the Republican presidential nomination in 1960. That worked, and the office has been an effective launching pad for aspiring candidates since.

But it wasn't until Jimmy Carter assumed the presidency that the vice presidency took on a substantive role. Carter saw the office as an underused asset and set out to make the most of it. He gave me an office in the West Wing, unimpeded access to him and to the flow of information, and specific assignments at home and abroad. He asked me, as the only other nationally elected official, to be his adviser and partner on a range of issues.

Our relationship depended on trust, mutual respect and an acknowledgement that there was only one agenda to be served—the president's. Every Monday the two of us met privately for lunch; we could, and did, talk candidly about virtually anything. By the end of four years we had completed the "executivization" of the vice presidency, ending two centuries of confusion, derision and irrelevance surrounding the office.

Subsequent administrations followed this pattern. George H.W. Bush, Dan Quayle and Al Gore built their vice presidencies after this model, allowing for their different interests, experiences and capabilities as well as the needs of the presidents they served.

This all changed in 2001, and especially after Sept. 11, when Cheney set out to create a largely independent power center in the office of the vice president. His was an unprecedented attempt not only to shape administration policy but, alarmingly, to limit the policy options sent to the president. It is essential that a president know all the relevant facts and viable options before making decisions, yet Cheney has discarded the "honest broker" role he played as President Gerald Ford's chief of staff.

Through his vast government experience, through the friends he had been able to place in key positions and through his considerable political skills, he has been increasingly able to determine the answers to questions put to the president—because he has been able to determine the questions. It was Cheney who persuaded President Bush to sign an order that denied access to any court by foreign terrorism suspects and Cheney who determined that the Geneva Conventions did not apply to enemy combatants captured in Afghanistan and Iraq.

Rather than subject his views to an established (and rational) vetting process, his practice has been to trust only his immediate staff before taking ideas directly to the president. Many of the ideas that Bush has subsequently bought into have proved offensive to the values of the Constitution and have been embarrassingly overturned by the courts.

The corollary to Cheney's zealous embrace of secrecy is his near total aversion to the notion of accountability. I've never seen a former member of the House of Representatives demonstrate such contempt for Congress—even when it was controlled by his own party. His insistence on invoking executive privilege to block virtually every congressional request for information has been stupefying—it's almost as if he denies the legitimacy of an equal branch of government. Nor does he exhibit much respect for public opinion, which amounts to indifference toward being held accountable by the people who elected him.

Whatever authority a vice president has is derived from the president under whom he