TABLE 1.—INSTANCES WHERE OPPORTUNITIES FOR FLOOR AMENDMENT WERE LIMITED BY THE SENATE MAJORITY LEADER OR HIS DESIGNEE FILLING OF PARTIALLY FILLING THE "AMENDMENT TREE": 1987–2008 [1]—Continued

Congress & Years	Senate Majority Leader	Measure(s)	Notes & Citations
		H.R. 2206, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.	On May 15, 2007, Sen. Reid filled the tree on the measure and the motion to commit, offering SA1123–1128. Floor debate indicates this was an action taken with the knowledge and cooperation of the minority leader, in an attempt to structure floor consideration and move the measure to conference. (Congressional Record, daily edition, vol. 153, May 15, 2007, p. S6116–S6117.)
		S. 1348, Comprehensive Immigration Reform Act of 2007. PARTIAL TREE	On June 7, 2007, Sen. Reid used his right of first recognition to offer two amendments to the measure, SA1492–1493. While this action does not appear to have completely filled the amendment tree, remarks made by the Senator in debate ("What I am going to do is send a couple of amendments to the desk so there is some control over amendments that are offered") suggest it was done to limit or obtain a measure of control over the next amendment offered by filling some available limbs and refusing consent to lay aside amendments. (Congressional Record, daily edition, vol. 153, June 7, 2007, p. S7303–7304)
		S. 1639, A bill to provide comprehensive immigration reform, and for other purposes..	On June 26, 2007, Sen. Reid proposed SA1934, and filled the "insert" tree multiple times when the amendment was subsequently divided into several components, an action which some colloquially referred to as the "clay pigeon."
		S.1, Honest Leadership and Open Government Act of 2007.	On July 31, 2007, Sen. Reid filled the tree on the motion to concur in the House amendment to the measure, offering amendments SA2589–2590. The leader then filed cloture on the motion. (Congressional Record, daily edition, vol. 153, July 31, 2007, pp. S10400–10401.)
		H.R. 1585, FY 2008 National Defense Authorization Act.	On Sept. 25, 2007, Sen. Reid offered SA3038–3040 to the motion to commit the bill, filling the recommit tree. (Congressional Record, daily edition, vol. 153, Sept. 25, 2007, p. S12024.)
		H.R. 976, Children's Health Insurance Program Reauthorization Act of 2007.	On Sept. 26, 2007, Sen. Reid moved to concur in the House amendments to the Senate amendments to H.R. 976. He then filed cloture on the motion and filled that tree, offering SA3071–3072. (Congressional Record, daily edition, vol. 153, Sept. 26, 2007, pp. S12122–12123.)
		H.R. 2419 Farm, Nutrition, and Bioenergy Act of 2007.	On Nov. 6, 2007, Sen. Reid filled the "strike and insert" tree as well as the motion to commit tree, offering SA3509–3514. In debate, the Senator indicated he would be willing to lay aside pending amendments in order for Senators to offer germane or relevant amendments. (Congressional Record, daily edition, vol. 153, Nov. 6, 2007, pp. S13946–13949.)
		H.R. 6, Energy Independence and Security Act of 2007.	On Dec. 12, 2007, Sen. Reid filled the tree on the motion to concur with two amendments SA3841–3842 and immediately filed cloture on the motion. (Congressional Record, daily edition, vol. 153, Dec. 12, 2007, p. S15218.)
		H.R. 5140, Economic Stimulus Act of 2008.	On Feb. 5, 2008, Sen. Reid filled the insert tree as well as on the motion to commit tree with amendments SA3983–3987. (Congressional Record, daily edition, vol. 154, Feb. 5, 2008, p. S656.)
		H.R. 2881, FAA Reauthorization Act of 2007.	On May 1, 2008, Sen. Reid filled the tree on the measure with amendments SA4628–4631 and on the motion to commit with instructions with SA4636–4637. (Congressional Record, daily edition, vol. 154, May 1, 2008, p. S3581–3582.)

[1] As of May 2, 2008. Information from the Legislative information System of the U.S. Congress (LIS) and cited issues of the Congressional Record.

Mr. SPECTER. I again call on the Rules Committee to take up my pending rule change which would stop this abhorrent practice.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

GASOLINE PRICES

Mr. CORNYN. Mr. President, I wish to join my distinguished colleague, the ranking member of the Judiciary Committee, in talking about the importance of moving judicial nominations through the Senate.

I also, though, wish to start by briefly mentioning a couple numbers. The first is $3.61. This is the average price of a gallon of gasoline in America today. The next number I would like to show my colleagues is 743. That is how many days it has been since Speaker PELOSI said she would—if elected Speaker—how long ago she said the Democrats would offer their commonsense plan for bringing down prices of gasoline at the pump. I would note we continue to wait for that commonsense plan, and Americans across this country are waiting for Congress to do something about it.

I would note last Friday I joined a number of my colleagues, including the Senator from New Mexico, Mr. DOMENICI, and others in introducing a plan we think will help bring down the price of gasoline at the pump. Our colleagues, not surprisingly, may disagree. But we are waiting for their plan, all these 743 days. I think the American people are wondering and watching and wondering why we have not acted and why Speaker PELOSI, in particular, has not followed through on her commitment made more than 2 years ago.

JUDICIAL NOMINATIONS

Mr. CORNYN. Mr. President, this morning, in North Carolina, Senator JOHN MCCAIN, the presumptive Republican nominee for President of the United States, is giving a very important speech. He may be speaking even as I am speaking. But he is talking about the role of judges in our Government. I think it is a very important speech. I hope our colleagues and the American people will pay close attention to what Senator MCCAIN is saying when he talks about the important role Federal judges play in our American Government.

I hope Senator OBAMA and Senator CLINTON will likewise take the opportunity, at the first chance they have, to talk about their philosophy, about the types of judges they believe should be nominated by the next President of the United States, were they to have that privilege and that opportunity.

Five years ago, on April 30, 2003, I, along with nine other of the newest Members of the Senate, wrote a letter on this issue to Senator Frist and Senator Daschle, the respective leaders of our parties. That letter was important not only because it was a bipartisan statement acknowledging the judicial confirmation process was broken and needed fixing but also important because it called, on a bipartisan basis, by the newest Members of the Senate, for a clean break or as we called it, a fresh start when it came to the issue of judicial confirmations and, notably, we said to "leave the bitterness of the past behind us."

Mr. President, I ask unanimous consent that letter be printed in the RECORD at the end of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CORNYN. I would like to read from a passage in that letter, signed by we 10 freshmen at the time. In 2003, we wrote to our leaders:

> In some instances, when a well qualified nominee for the federal bench is denied a vote, the obstruction is justified on the ground of how prior nominees—typically, the nominees of a previous President—were treated. All of these recriminations, made by members on both sides of the aisle, relate to circumstances which occurred before any of us [actually] arrived in the United States Senate. None of us were parties to any of the reported past offenses, whether real or perceived. None of us believe that the ill will of the past should dictate the terms and direction of the future.

Unfortunately, 5 years later, when it comes to judicial nominations, the grievances of the past are still dictating the terms and direction of the future when it comes to judicial nominees. There is still time for that fresh start we called for, still time for a clean slate but, unfortunately, no signs that is likely to occur in the current environment.

So it will likely come to pass once again that last year's and the previous year's grievances will be used again, not without some justification, by Senate Republicans to justify the obstruction of a future Democratic President's judicial nominees, which shows the death spiral we are involved in when it comes to not taking care of the Nation's work, not allowing an up-or-down vote of judicial nominees on the floor of the Senate.

When it comes to judicial nominations, the Senate is supposed to be, as Senator SPECTER said, the world's greatest deliberative body. But it often acts more like the Hatfields and the McCoys, or perhaps, for those who remember Huck Finn, the Grangerfords and the Shepherdsons, who do not know how the feud began but, nonetheless, continue to escalate the violence.

Let's step back and consider the basic facts. Right now across America there are 46 Federal judicial vacancies—12 on the circuit court of appeals, 34 on the district courts. Of these 46 vacancies, 13 are considered "judicial emergencies," including a handful on the Fourth Circuit Court of Appeals,

where a full 33 percent of the bench is vacant because we in the Senate have not done our job.

The simple fact of the matter is, thus far, during President Bush's final 2 years in office, we have seen a record-low number of Federal judges approved by the Senate.

Since our friends on the other side of the aisle took over the Senate in 2007, a total of only 7 circuit court nominees have been approved—and only one this year. It would be most unfortunate and indeed, I daresay, precedent setting if this Senate set this new low-water mark.

For my part, I have been pleased to work with the chairman of the Judiciary Committee, Senator LEAHY, to gain confirmation of the last two Texans to be nominated and confirmed to the Fifth Circuit Court of Appeals. Most recently, I appreciated the chairman's cooperation and assistance in confirming Catharina Haynes to the Fifth Circuit.

But despite my appreciation, I must also express my regret that Ms. Haynes is the only circuit nominee confirmed this year. I would not be fulfilling my oath of office if I did not press for fair treatment not only for judicial nominees who come from my State, Texas, but for my colleagues' home State nominees as well.

There are many other critical judicial positions that demand our immediate action. I mentioned the Fourth Circuit, which serves the States of Virginia, Maryland, North Carolina, South Carolina, and West Virginia.

The Fourth Circuit is currently operating, as I indicated, with one-third less than a full complement of judges on the bench. That is why the Judicial Conference has called this a judicial emergency. The Senate can and must act to alleviate this strain and this denial of access to justice on behalf of the people of those States, who are denied access to justice because there are simply not enough judges who have been confirmed to sit and hear their cases.

The Judiciary Committee is poised to act this Thursday on Justice Stephen Agee of Virginia, a Fourth Circuit nominee, and it should at the very least move forward with the nominations of other Fourth Circuit nominees who have the support of both home State Senators.

Even the Washington Post, in December 2007, decried the situation on the Fourth Circuit saying:

> [T]he Senate should act in good faith to fill vacancies—not as a favor to the president but out of respect for the residents, businesses, defendants and victims of crime in the region the 4th Circuit covers.

I am greatly disappointed the Judiciary Committee has been so slow to act on these important nominations. I would ask the chairman again to push forward with hearings and give the nominees an opportunity for an up-or-down vote on the Senate floor.

There is no doubt the American people deserve, and our very concept of American Government requires, qualified judges who understand the proper role of a judge, which is not to be another branch of the legislature dispensing their view of justice, sort of on an ad hoc basis, but, rather, judges who believe their job is to interpret and enforce the Constitution, not to make up the law as they go along.

As such, we should exercise due diligence to properly review nominees. But the constitutionally mandated process of advice and consent should be done expeditiously, and debates on these nominees should be done openly, as the Senator from Pennsylvania suggested.

> We have before us numerous well-qualified nominees who have offered themselves to serve our citizens. We must endeavor to minimize the role of partisan politics in judicial nominations, and we should work harder to ensure the judicial vacancies are filled in a more timely manner.

I know my time is up, and I know the distinguished Senator from Arizona is here to speak, perhaps on the same subject. But I am glad Senator MCCAIN, the presumptive Republican nominee, is speaking on this important issue today. I repeat my hope that Senator OBAMA and Senator CLINTON would address this very important responsibility of the next President of the United States. But I would submit, again, it is our responsibility to promptly move on these nominations and to give these nominees a fair up-or-down vote. That has not been happening.

Mr. President, I yield the floor.

EXHIBIT 1

U.S. SENATE,
Washington, DC, April 30, 2003.

DEAR SENATORS FRIST AND DASCHLE: As the ten newest members of the United States Senate, we write to express our concerns about the state of the federal judicial nomination and confirmation process. The apparent breakdown in this process reflects poorly on the ability of the Senate and the Administration to work together in the best interests of our country. The breakdown also disserves the qualified nominees to the federal bench whose confirmations have been delayed or blocked, and the American people who rely on our federal courts for justice.

We, the ten freshmen of the United States Senate for the 108th Congress, are a diverse group. Among our ranks are former federal executive branch officials, members of the U.S. House of Representatives, and state attorneys general. We include state and local officials, and a former trial and appellate judge. We have different viewpoints on a variety of important issues currently facing our country. But we are united in our commitment to maintaining and preserving a fair and effective justice system for all Americans. And we are united in our concern that the judicial confirmation process is broken and needs to be fixed.

In some instances, when a well qualified nominee for the federal bench is denied a vote, the obstruction is justified on the ground of how prior nominees—typically, the nominees of a previous President—were treated. All of these recriminations, made by members on both sides of the aisle, relate to circumstances which occurred before any of us arrived in the United States Senate. None of us were parties to any of the reported past offenses, whether real or perceived. None of us believe that the ill will of the past should dictate the terms and direction of the future.

Each of us firmly believes that the United States Senate needs a fresh start. And each of us believes strongly that we were elected to this body in order to do a job for the citizens of our respective states—to enact legislation to stimulate our economy, protect national security, and promote the national welfare, and to provide advice and consent, and to vote on the President's nominations to important positions in the executive branch and on our nation's courts.

Accordingly, the ten freshmen of the United States Senate for the 108th Congress urge you to work toward improving the Senate's use of the current process or establishing a better process for the Senate's consideration of judicial nominations. We acknowledge that the White House should be included in repairing this process.

All of us were elected to do a job. Unfortunately, the current state of our judicial confirmation process prevents us from doing an important part of that job. We seek a bipartisan solution that will protect the integrity and independence of our nation's courts, ensure fairness for judicial nominees, and leave the bitterness of the past behind us.

Yours truly,

John Cornyn, Lisa Murkowski, Elizabeth Dole, Norm Coleman, Lamar Alexander, Mark Pryor, Lindsey Graham, Saxby Chambliss, Jim Talent, John E. Sununu.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, might I inquire how much time is remaining on this side?

The ACTING PRESIDENT pro tempore. Six and a half minutes.

Mr. KYL. Thank you, Mr. President.

I appreciate the comments of my colleague from Texas and would note, as he did, my colleague from Arizona, JOHN MCCAIN, is making an important statement today respecting the need to confirm good judges for our court of appeals and Federal district courts—something which he will be committed to when he is President of the United States.

Our friends around the country might be wondering: What exactly is going on around here? Why are we talking about the need to confirm judges? It is a good question. The answer is this: It is interesting that in most of the Presidencies—in fact, in the last four Presidencies—in the last 2 years of the Presidency, the other party is in charge of the Senate. You had that situation with Ronald Reagan; with George Bush, the 41st President; with Bill Clinton; and with the current President Bush. In each case, the other party was in charge of the Senate the last 2 years of their Presidency.

Now, on the average, between 15 and 17 circuit court judges have been confirmed in the last 2 years, even though it is the other party in charge of the Senate. That is because we have a responsibility under the Constitution to act on the nominees the President, regardless of party, has made.

That is his job, and this is our job. Both of us have to do our jobs. It would not be appropriate for the Senate to simply sit on our hands and not act on the nominees of the President, even though he may be of the other party.

So between 15 and 17 nominees of the President have been confirmed each of the last 2 years for these last Presidencies. But, unfortunately, that is not the case with the current President. We are not on track to get that number confirmed. In fact, we have only had six confirmed.

That is why our leader, Senator MCCONNELL, sought to have an agreement with the majority leader to try to get more circuit judges confirmed. An agreement was reached that at least three judges would be confirmed by the end of this month.

Now, what is interesting is that up to now, there has been sort of a sense that: Well, it is not possible to get very many judges confirmed. It takes a long time, and there is a lot of process involved. But what this latest agreement demonstrates, as Senator SPECTER, who spoke earlier, pointed out, is that when the majority party wants to, it can act very quickly to confirm judges. In fact, it can move very quickly.

That is what Senator LEAHY, the chairman of the Senate Judiciary Committee, is now doing because, unfortunately, he does not want to take the judges who are in the queue and get those judges considered by the committee on the floor of the Senate and voted on by the Senate. He has judges that he would rather get considered, but they were way behind in the process. So he is speeding them up, getting them through the process very quickly, in breach of what had been the policy in the past.

Nevertheless, he is moving them along very quickly with an intention, I gather, to try to comply with this agreement and get them confirmed by the end of the month. That is a good thing in the sense that we will get three more circuit court nominees.

I suspect it does illustrate that the Judiciary Committee and the Senate can act quickly when we want to get these confirmations accomplished. But that will leave us several more judges who have been pending a long time. That will leave us the months of June, July, and September, at least, when we can confirm additional nominees. The question will be, what will happen then? Will we act with similar alacrity?

We have one judge nominee, Peter Keisler, who has been pending for almost 2 years now. His hearing has been held. All he has to do is come before the committee. That will take 1 or 2 weeks at the most, and he could be on the floor of the Senate. We have other nominees from the Fourth Circuit Court of Appeals, four nominees pending in the Judiciary Committee. Judge Robert Conrad and Steve Matthews are ready for hearings. Mr. Rod Rosenstein of Maryland could be ready but is being blocked by the two Senators from his State. Judge Steven Agee had a hearing last week.

So there are judges in the queue who could be dealt with. There is no reason to hold them back except a possible desire not to get them confirmed or politics. I don't know what is behind it. There is no reason not to move forward with these nominees.

The Washington Post, no big supporter of the President, said recently, after we confirmed one court of appeals nominee:

> That should be only the beginning. . . .In the past two years, the Senate has confirmed seven nominees to the Court of Appeals; 16 such nominees were confirmed during President Bill Clinton's final two years in office.
>
> It appears unlikely that Democratic Senators will match that number, but they should at least give every current nominee an up-or-down vote and expeditiously process the nominees to the U.S. Court of Appeals for the 4th Circuit, where five of the court's 15 seats are vacant.

That was an editorial entitled, ''Judges, and Justice, Delayed: The Senate Needs To Move Faster On Court Nominations,'' of April 15, 2008. That is obviously very true. There is no reason these other judges cannot be considered as well. When we ask the question, what is really going on, it is that the chairman of the committee apparently is desirous of picking and choosing which nominees move forward. It is not a matter that the nominees cannot move forward.

In one case, or in two or three cases, they are ready to have the hearings. In one case, the hearing has already been held. So it is literally only a matter of a week or two before those nominees could be brought to the Senate floor. As illustrated by the current process, to get these other judges confirmed by Memorial Day, it is clear that when we want to we can accelerate the process and get the job done.

I will close by noting that regarding the nominee who has been pending now for almost 2 years, Peter Keisler, the Washington Post had this to say:

> Peter Keisler was nominated in 2006 to the U.S. Court of Appeals for the DC Circuit; his confirmation hearing was in August of that year. It is a travesty that he has yet to get a vote from the Senate Judiciary Committee.

Here, I will interpose, what is the holdup? Going back to the editorial:

> Mr. Keisler, who was chief of the Justice Department's Civil Division before joining a private law firm, earns plaudits from the right and left for stellar intellect and his judicial demeanor. Democrats have held up Mr. Keisler's nomination over a squabble about whether the DC Circuit needs 12 full-time judges. That dispute is over: Congress eliminated the 12th seat this year. Mr. Keisler should be confirmed forthwith.

So, clearly, we have nominees who should be confirmed. They are in the queue waiting. They could be easily taken up this week or next week. Their hearings need to be held. They need to be brought to the Senate floor and I urge my colleagues to work with us to move this process forward so these important nominees can be considered by the full Senate.

The ACTING PRESIDENT pro tempore. The Senator from Washington is recognized.

FAA MODERNIZATION ACT

Mrs. MURRAY. Mr. President, the FAA Modernization Act, which we are debating in the Senate today, makes critical improvements that will ensure our aviation system is safe and efficient. That will put us on a path to modernizing our air traffic control system.

Now, in a short while, early this afternoon, the Senate will vote on whether we will finish this bill and send it to conference or whether Republicans are again going to refuse to work with us and force us to take this bill off the Senate floor.

I hope we are going to vote to move forward this afternoon. My colleagues on the Commerce and Finance Committees worked very hard on this important bill because it is critical to our Nation's economy that our aviation system work smoothly. We have some serious problems that we need to address.

Our air travel infrastructure is aging fast. It needs to be updated. The bill before us will help us modernize our aviation system to ensure that it continues to be the safest in the world.

We also have to take action to help carriers deal with rising fuel costs and, of course, to protect our passengers by reducing flight delays and cancellations.

Unfortunately, as we speak this morning, the Senate is essentially deadlocked. Republicans say they object to certain tax provisions, even though this bill, I remind everyone, was supported overwhelmingly when it was marked up in the Finance Committee. But our Republican colleagues insist that we strip out every provision that isn't directly linked to aviation. If that isn't done, they say they are going to filibuster this bill and keep us from ever getting to a final vote on it.

The majority leader has said time and again that he would welcome amendments to the bill, but Republicans have refused. Instead of working with us to come to an agreement on the points they oppose, they are going to block the whole bill.

What is most unfortunate about the Republican filibuster today is that this is a vitally important piece of legislation. Although my job as chairman of the Transportation Appropriations Subcommittee is to deal with appropriations, not authorizations, I can also tell you that this FAA bill is not just a bill that would be nice to have, it is a bill we must have.

Some of our most important aviation authorities expire at the end of this June. That means by the end of next month, if this bill is not enacted, the FAA will no longer have the authority to spend money out of the Airport and Airway Trust Fund.

Every penny that has been appropriated for purchasing and modernization at the FAA is paid for out of that fund. So if this bill doesn't become law at the end of next month, billions of dollars in projects at the FAA are going to grind to a halt.