

public land ranchers have migrated to private lands, infringing on our property rights. Many of today's decisions are simply not "right for the resource".

These 21st century resource management challenges have also forced ranchers and the organizations that represent them into the litigation arena to an unprecedented extent. Certain environmental organizations have perfected the litigation process as a tool to make government dysfunctional. Their formula is simple: Challenge every unfavorable decision on simple procedural grounds, utilizing the National Environmental Policy Act (NEPA) or the Endangered Species Act (ESA), as a tool. Make massive, costly and time-consuming demands on the agencies for documents under the Freedom of Information Act (FOIA), thereby preventing agency personnel from performing normal duties. Identify "friendly" courts that will assure a favorable decision on the weakest of evidence. Assume that the environmental organization's legal fees are paid by the taxpayer and that the FOIA fees are waived "in the public interest". This is the shameful but successful strategy of Western Watersheds Project, Center for Biological Diversity, Forest Guardians and a host of similarly aligned conspirators.

Meanwhile, back at the ranch, individual families are forced to scrape together thousands of dollars of their own funds to defend property rights and federal grazing permits. Financial and human resources that would otherwise be directed toward resource management and improvements are diverted to legal fees and endless meeting participation, thereby strengthening the claims of the environmental plaintiffs that the resource is not being properly managed. The rancher is placed in a vicious circle from which there is no ready escape.

Agricultural organizations at the state, national and local levels have stepped up to the plate in recent years in order to address these threats in a collective manner and relieve some of the burden placed on individual ranchers. In Wyoming, state government has been a partner in this effort, in particular regarding endangered species.

In 1999 the Wyoming Stock Growers Association (WSGA), for the first time in its then over 125 year history, deemed it necessary to establish a permanent Litigation Fund to support challenges by the radical environmental community. Since that time the generosity of our members and supporters has allowed us to participate in or financially support over ten (10) defenses of the property rights and interests of the ranching community. In addition to these direct expenditures, an increasing portion of staff time is dedicated to reviewing litigation and determining the appropriate level of involvement for the organization.

Currently, WSGA is involved as an intervenor in litigation seeking the listing of the sage grouse and in challenges to the state's elk feedgrounds. We have filed a motion to intervene in recent litigation seeking to force listing of the mountain plover. WSGA, joined by WWGA, has recently moved to file an amicus brief in litigation challenging the delisting of the grizzly bear. We were in the process of filing in the black-tailed prairie dog litigation when a settlement was reached. In addition, WSGA is a leader in an effort by the National Public Lands Council challenging the overturning of the revised BLM grazing regulations. The announcement last week by WildEarth Guardians of a lawsuit challenging the Secretary of Interior for failure to act on listing petitions for 681 species will undoubtedly present new "opportunities" for our involvement.

The ESA and NEPA are laws whose original intent remains valid. However, they have

been co-opted by environmental litigants as procedural hurdles to serve their ultimate goal of land use control. Congress has demonstrated its inability to act in restoring integrity to these laws. There will continue to be a handful of federal judges who are willing to aid and abet in their abuse.

WSGA and others will continue to defend the property rights and grazing permits of ranchers in environmental litigation. This alone will not be enough. The time has arrived when we must develop a multi-faceted strategy to end this abuse of our rights and our legal system. We have begun the proactive step of building public support for our stewardship and forming alliances with other groups who support our role in resource management. Future steps should include an expose of the motives and tactics of select radical environmental groups and direct legal challenges to certain of their practices. This strategy will demand even greater short-term sacrifices by ranchers and a strong coordinated commitment by those who represent them. Success will assure a sustainable resource and a more secure future for our industry.

#### JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, before the last recess, the Senate confirmed Judge G. Steven Agee of Virginia to the United States Court of Appeals for the Fourth Circuit. His confirmation lowered the remaining vacancies on that circuit to less than there were at the end of the Clinton administration, when a Republican-controlled Senate had refused to consider any nominees to the Fourth Circuit during the last 2 years of the Clinton Presidency. The Republican Senate majority used the Clinton years to more than double circuit court vacancies around the country. By contrast, we have already reduced circuit court vacancies by almost two-thirds, in the process reducing them to zero or only a single vacancy in nearly every circuit. We have already reduced vacancies among the 13 Federal circuit courts throughout the country from 32—which is what it was when I became chairman of the Judiciary Committee in the summer of 2001—to 11, the lowest number of vacancies in more than a decade.

When Republican Senators are ready to allow us to consider and confirm the President's nominations to fill the last two remaining vacancies on the Sixth Circuit, yet another circuit will be without any vacancies. We will reduce the total number of circuit court vacancies to single digits for the first time in decades. Lost in all the agitating from the other side of the aisle is the fact that we have succeeded in reducing circuit court vacancies to historically low levels.

In addition, this work period we have the opportunity to complete Senate consideration of five additional nominees for lifetime appointment to Federal courts, which are pending on the Senate's Executive Calendar. The Judiciary Committee has favorably reported the nominations of Mark Davis of Virginia to fill a vacancy in the Eastern District of Virginia, David Kays of Missouri to fill a vacancy in

the Western District of Missouri, Stephen Limbaugh of Missouri to fill a vacancy in the Eastern District of Missouri, William Lawrence of Indiana to fill a vacancy in the Southern District of Indiana and Murray Snow of Arizona to fill a vacancy there. In addition, when the Judiciary Committee considers the nominations of Judge Helene White and Ray Kethledge to the Sixth Circuit, we will also consider the nomination of Stephen Murphy to the Eastern District of Michigan. Thus, with cooperation from across the aisle, the Senate should be in position to have confirmed four circuit court judges and 11 district court judges before the Fourth of July recess, for a total of 15 additional Federal judges.

By comparison, during the 1996 session when a Republican Senate majority was considering the judicial nominees of a Democratic President in a Presidential election year, not a single judge was confirmed before the Fourth of July recess—not even one. That was the same session in which they failed to confirm a single circuit court nominee.

Another stark comparison is that on June 1, 2000, when a Republican Senate majority was considering the judicial nominees of a Democratic President in a Presidential election year, there were 66 judicial vacancies. Twenty were circuit court vacancies, and 46 were district court vacancies. Those vacancies were the result of years of Republican pocket filibusters of judicial nominations. This year, by comparison there are just 47 total vacancies with only 11 circuit vacancies and 36 district court vacancies. If we can continue to make progress this month, the current vacancies could be reduced to fewer than 40, with only 9 circuit court vacancies and 30 district court vacancies.

The history is clear. When Republicans were busy pocket filibustering Clinton nominees, Federal judicial vacancies grew to more than 100, and circuit vacancies to more than 30.

When I became chairman for the first time in the summer of 2001, we quickly—and dramatically—lowered vacancies. The 100 nominations we confirmed in only 17 months, while working with a most uncooperative White House, reduced vacancies by 45 percent.

After the 4 intervening years of a Republican Senate majority, vacancies remained about level.

It is the Democratic Senate majority that has again worked hard to lower them in this Congress. We have gone from more than 110 vacancies to less than 50. With respect to Federal circuit court vacancies, we have reversed course from the days during which the Republican Senate majority more than doubled circuit vacancies. Circuit vacancies have been reduced by almost two-thirds and have not been this low since 1996, when the Republican tactics of slowing judicial confirmations began in earnest.

Consider for a moment the numbers: After another productive month, just 9

of the 178 authorized circuit court judgeships will remain vacant—just 9—a vacancy rate down from 18 percent to just 5 percent. With 168 active appellate judges and 104 senior status judges serving on the Federal Courts of Appeals, there are 272 circuit court judges. I expect that is the most in our history.

I regret to report that when I tried to expedite consideration of President Bush's two Sixth Circuit nominations last month, I encountered only criticism from the Republican side of the aisle, as did one of the nominees. Senator BROWNBACK publicly apologized for his actions at the hearing, and I commended him for doing so.

We have now received the updated ABA rating for President Bush's nomination of Judge Helene White to the Sixth Circuit. She received a well qualified rating. That did not come as any surprise. She has served ably on the Michigan state appellate courts and acquired additional experience in the decade since when she was nominated by President Clinton and the Republican Senate majority refused to consider her nomination. The White and Kethledge nominations to the Sixth Circuit break a logjam after 7 long years.

In light of Republican criticism of my efforts to expedite consideration of President Bush's Sixth Circuit nominations, I have said that the nominations would be scheduled for committee consideration after we received updated ratings from the ABA. Now we have and I plan to include them on the agenda for the committee's business meeting on June 12. I trust that all Senators will be prepared to consider and vote on the nominations at that time. That should provide the Senate with the opportunity to consider them before the July 4 recess.

The President has not nominated anyone to 16 current judicial vacancies. He has refused since 2004 to work with the California Senators on a successor to Judge Trott on the Ninth Circuit. The district court vacancies without nominees span from those that arose in Mississippi and Michigan in 2006, to several from 2007 in Pennsylvania, Michigan, Indiana and the District of Columbia, to others that arose earlier this year in Kansas, Virginia, Washington, and several in Colorado and Pennsylvania.

Disputes over a handful of controversial judicial nominations have wasted valuable time that could be spent on the real priorities of every American. I have sought, instead, to make progress where we can. The result is the significant reduction in judicial vacancies.

The alternative is to risk becoming embroiled in contentious debates for months. The most recent controversial Bush judicial nomination took 5½ months of debate after a hearing before Senate action was possible. I am sure there are some who prefer partisan fights designed to energize a political base during an election year, but I do

not. I will continue in this Congress, and with a new President in the next Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent, and able to provide justice to all Americans, without fear or favor.

In fact, our work has led to a reduction in vacancies in nearly every circuit, reducing vacancies on almost every circuit to only one or none. Both the Second and Fifth Circuits had circuit-wide emergencies due to the multiple simultaneous vacancies during the Clinton years with Republicans in control of the Senate. Both the Second Circuit and the Fifth Circuit now are without a single vacancy. We have already succeeded in lowering vacancies in the Second Circuit, the Fourth Circuit, the Fifth Circuit, the Sixth Circuit, the Eighth Circuit, the Ninth Circuit, the Tenth Circuit, the Eleventh Circuit, the DC Circuit, and the Federal Circuit. Circuits with no current vacancies include the Seventh Circuit, the Eighth Circuit, the Tenth Circuit, the Eleventh Circuit and the Federal Circuit. When we are allowed to proceed with President Bush's nominations of Judge White and Ray Kethledge to the Sixth Circuit, it will join that list of Federal circuits without a single vacancy.

My approach has been consistent throughout my chairmanships during the Bush Presidency. The results have been positive. Last year, the Judiciary Committee favorably reported 40 judicial nominations to the Senate and all 40 were confirmed. That was more than had been confirmed in any of the three preceding years when a Republican chairman and Republican Senate majority managed the process.

Still, some partisans seem determined to provoke an election year fight over nominations. The press accounts are filled with threats of Republican reprisals. The May 14 issue of *Roll Call* boasted the following headline: "GOP Itching for Fight Over Judges; Reid's Pledge to Move Three Before Recess Fails to Appease Minority." Then in a recent article in *The Washington Times*, we read that the Republican fixation on judges is part of an effort to bolster Senator MCCAIN's standing among conservatives. There seem to be no steps we could take to satisfy Senate Republicans on nominations because they are using it as a partisan issue to rev up their partisan political base.

Among the reasons that Republican complaints about the Fourth Circuit ring hollow is that the emergency vacancy on the Fourth Circuit from North Carolina exists only because the Republican Senate majority refused to consider any of President Clinton's nominees to fill that vacancy. All four nominees from North Carolina to the Fourth Circuit were blocked from consideration by the Republican Senate majority. That also prevented President Clinton from integrating the Fourth Circuit through appointment of Judge Beaty or Judge Wynn.

Of course, during the Clinton administration, Republican Senators argued that the Fourth Circuit vacancies did not need to be filled because the Fourth Circuit had the fastest docket time to disposition in the country. That was the period when Fourth Circuit vacancies rose to five. One of those vacancies—to a seat in North Carolina—still exists because the President insisted on nominating and renominating Terrence Boyle over the course of 6 years to fill that vacancy. That highly controversial nomination persisted for years despite the strong opposition of law enforcement officers from across the country, civil rights groups, and those knowledgeable and respectful of judicial ethics opposed the nomination.

The Fourth Circuit now has fewer vacancies than it did when Republicans claimed no more judges were needed, and fewer vacancies than at the end of the Clinton administration. I have already said that once the paperwork on President Bush's nomination of Judge Glen Conrad to the Fourth Circuit is completed, if there is sufficient time, I hope to move to that nomination.

This is not the first time we have heard false complaints about our progress on nominations. One of the Republicans' favorite talking points is to use a mythical "statistical average" of selected years to argue that the Senate must confirm 15 circuit judges in this Congress. They only achieve this inflated so-called "historical average" by taking advantage of the high confirmation numbers of Democratic-led Senates confirming the nominees of President Reagan and the first President Bush. They ignore their own record of doubling vacancies during the Clinton administration, including during the 1996 session when the Republican-led Senate refused to confirm a single circuit court nominee.

They do not like to recall that during the 1996 session, when a Republican majority controlled the Senate during a Presidential election year, they refused to confirm any circuit court judges at all—not one. Their practice of pocket filibustering President Clinton's judicial nominees led Chief Justice Rehnquist to criticize them publicly. Chief Justice Rehnquist was hardly a Democratic partisan. Quite the contrary. Even he was appalled by the actions of the Republican Senate majority. In his 1996 Year-End Report on the Federal Judiciary, he wrote:

Because the number of judges confirmed in 1996 was low in comparison to the number confirmed in preceding years, the vacancy rate is beginning to climb. When the 104th Congress adjourned in 1996, 17 new judges had been appointed and 28 nominations had not been acted upon. Fortunately, a dependable corps of senior judges contributes significantly to easing the impact of unfilled judgeships. It is hoped that the Administration and Congress will continue to recognize that filling judicial vacancies is crucial to the fair and effective administration of justice.

When that shot across the bow did not lead the Republican Senate majority to reverse course, Chief Justice

Rehnquist spoke up, again, in his 1997 Year-End Report on the Federal Judiciary. It was a salvo from a Republican Chief Justice critical of the Republican Senate leadership:

Currently, 82 of the 846 Article III judicial offices in the federal Judiciary—almost one out of every ten—are vacant. Twenty-six of the vacancies have been in existence for 18 months or longer and on that basis constitute what are called “judicial emergencies.” In the Court of Appeals for the Ninth Circuit, the percentage of vacancies is particularly troubling, with over one-third of its seats empty.

Judicial vacancies can contribute to a backlog of cases, undue delays in civil cases, and stopgap measures to shift judicial personnel where they are most needed. Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal Judiciary. Fortunately for the Judiciary, a dependable corps of senior judges has contributed significantly to easing the impact of unfilled judgeships.

It was only after the scorching criticism by a Republican Chief Justice that the Republican Senate majority modified its approach in order to allow some of the nominations that had been held back for years to finally proceed. Having built up scores of vacancies, some were allowed to be filled while the Republican Senate majority carefully kept vacant circuit court positions to be filled by President Clinton's successor. It is in that context that Republican claims of magnanimity must be seen for what it was. It is in that context that the 8 circuit confirmations in 2000 must be evaluated while the Republican Senate majority returned 17 circuit nominations to President Clinton at the end of that session without action.

By contrast, the Democratic Senate majority has worked steadily and steadfastly to lower vacancies and make progress, and we have. When Senate Republicans allow the Senate to confirm President Bush's Sixth circuit nominees, we will have achieved the average number of circuit confirmations the Republican Senate majority achieved in presidential election years and lowered circuit vacancies to an historically low level.

Further, the Republican effort to create an issue over judicial confirmations is sorely misplaced. Americans are now facing an economic recession, massive job losses of 232,000 in the first 3 months of this year, increasing burdens from the soaring price of gas, and a home mortgage foreclosure and credit crisis.

Last month, the Commerce Department reported the worst plunge in new homes sales in two decades. The press reported that new home sales fell 8.5 percent to the slowest sales pace since October 1991, and the median price of a home sold in March dropped 13.3 percent compared to the previous year. That was the biggest year-over-year price decline in four decades. You would have to go back to July 1970 to find a larger decline. Sales of existing homes also fell in March, as did em-

ployment and orders for big ticket manufactured goods, both of which fell for the third month in a row.

Unfortunately, this bad economic news for hard-working Americans is nothing new under the Bush administration. During the Bush administration, unemployment is up more than 20 percent; the price of gas has more than doubled and is now at a record high national average of over \$3.94; 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. According to a recent poll, 81 percent of Americans today believe that our country is headed in the wrong direction. It costs more than \$1 billion a day—\$1 billion a day—just to pay down the interest on the national debt and the massive costs generated by the disastrous war in Iraq. That's \$365 billion this year that would be better spent on priorities like health care for all Americans, better schools, fighting crime, and treating diseases at home and abroad.

In contrast, one of the few numbers actually going down as the President winds down his tenure is that of judicial vacancies. Senate Democrats have worked hard to make progress on judicial nominations, lowering circuit court vacancies by almost two-thirds from the level to which the Republican Senate majority had built them. Any effort to turn attention from the real issues facing Americans to win political points with judicial nominations is neither prudent, nor productive.

#### RECOGNIZING L. ROBERT KIMBALL

Mr. SPECTER. Mr. President, I have sought recognition to recognize an outstanding Pennsylvania citizen, L. Robert Kimball.

In 1953, L. Robert Kimball opened the doors of a surveying and civil engineering consulting company in Ebensburg, PA. Under Mr. Kimball's leadership over the past 55 years, L. Robert Kimball & Associates has grown from a 2-person outfit to a 600-person firm which now oversees nearly 1,200 projects a year in 14 offices across the United States.

L. Robert Kimball's leadership has not gone unnoticed. Among his many commendations are the Outstanding Engineering Alumnus Award and the Distinguished Alumnus Award from the Pennsylvania State University, the Western Pennsylvania Family Business of the Year Award from the University of Pittsburgh's Katz Graduate School of Business, and the Small Business Person of the Year Award from the Small Business Association.

I will conclude by commending the four guiding principles that Mr. Kimball instills in each his staff: have a goal, be persistent, know when to change direction, and enjoy your work.

#### ADDITIONAL STATEMENTS

##### SYDNEY POLLACK: IN MEMORIAM

• Mrs. BOXER. Mr. President, I ask my colleagues to join me in honoring the memory of a very special man, Sydney Pollack of Los Angeles County, who died May 26, 2008. He was 73 years old.

Sydney Pollack was a master filmmaker and will be fondly remembered for his over four decades of work in Hollywood as a director, producer, and actor.

Sydney Irwin Pollack was born to Rebecca and David Pollack on July 1, 1934, in Lafayette, IN. He was raised in South Bend and moved to New York City in 1952 to study at the Neighborhood Playhouse. While there, Sydney so impressed head acting teacher Sanford Meisner, that Mr. Meisner quickly made Sydney his assistant. Sydney went on to teach at the Neighborhood Playhouse from 1954-1959, guiding the talents of actors such as Robert Duvall, Rip Torn, Brenda Vaccaro, and Claire Griswold, whom he married in 1958.

At the urging of Director John Frankenheimer, Sydney left New York City in 1961 for Hollywood where he began work as a director of television shows. In 1965, Sydney made his movie-directing debut in the suicide help-line drama, “The Slender Thread” with Sidney Poitier and Anne Bancroft. In 1969, Sydney received his first Best Director nomination for an Academy Award for the film “They Shoot Horses Don't They?”

As an actor, Sydney's key roles include Woody Allen's “Husbands and Wives,” 1992, Robert Altman's “The Player,” 1992, and Stanley Kubrick's “Eyes Wide Shut,” 1999. Sydney's most notable acting and directing role was in his 1982 comedy film “Tootsie” in which he played George Fields, agent to the main character played by Dustin Hoffman. His production company, Mirage, produced this film as well as many others, most recently “Michael Clayton” in which Sydney gave yet another memorable performance.

Perhaps Sydney Pollack's biggest directing triumph came in 1985 with “Out of Africa.” This landmark film received seven Academy Awards—Best Picture, Director, Adapted Screenplay, Cinematography, Original Score, Art Direction, Sound—and three Golden Globe Awards—Best Picture, Supporting Actor, Original Score. “Out of Africa” was also an example of one of the great collaborations of all time between actor and director. Sydney Pollack and Robert Redford made seven classic films together that include “This Property Is Condemned,” “Jeremiah Johnson,” “The Electric Horseman,” “3 Days of the Condor,” “The Way We Were,” and “Havana.”

Those who knew Sydney Pollack recognize him as a courageous, innovative and brilliant man. He took pride in tackling social issues through films which raise interesting and challenging