

will unleash renewable energy projects creating jobs, provided targeted tax relief to low-income working families struggling to pay for the high cost of food and fuel, encourage an infusion of capital into rural and urban communities, provide tax incentives for retail businesses looking to grow their business, and help keep the jobs associated with film production within our borders. Not to mention, the tax extenders bill also includes provisions such as the R&D tax credit, the tuition deduction and the teachers classroom expenses deduction that are widely supported on both sides of the aisle.

Clearly, this tax extenders package is critical to Congress's ongoing efforts to reverse the economic slowdown that our Nation is facing. For the fifth month this year, U.S. employers have cut jobs including 49,000 in the month of May alone. The number of Americans filing first-time claims for unemployment benefits is at its highest level since October of 2004 and the increase in the rate was the largest since 1986.

The Senate should move forward on extending expiring tax relief. There are some aspects of the House bill that I believe should be improved upon, such as providing an AMT patch to stop the expansion of this mass tax. Some on the other side of the aisle believe we should at least attempt to pay for tax relief, a position I happen to agree with. Others on my side of the aisle believe that shouldn't continue to be a maintenance Congress, continually passing short-term temporary tax relief, a position that I also happen to agree with.

There are differences of opinion, but what is the Senate afraid of? What are we afraid of? To debate and to vote on various positions? Some of those issues and positions I would disagree with. But does that mean to say the Senate cannot withstand the conflicting views of various Members of the Senate? It is not unheard of, that both sides of the political aisle will have differing views. So, I would urge my colleagues to join me in supporting the motion to proceed. If the motion succeeds, I am hopeful that we can do what the Senate ought to do—that is find some common ground on an amendment process and a way forward to finally dispose of the legislation and enact this legislation sooner rather than later.

I came to this discussion to work on this issue, to debate, which is consistent with the traditions and principles of this institution, which has been its hallmark. That is why it has been considered the greatest deliberative body in the world. Unfortunately, it is not living up to that expectation or characterization, regrettably.

Let's have an open and unfettered debate, which is consistent with this institution that is predicated on our Founding Fathers' vision of an institution based on accommodation and consensus. You have to get 60 votes. So let's work it out. Let's clear this first

hurdle and proceed to the bill. My side of the aisle will still have another 60 vote threshold to ensure that their concerns are heard.

The Senate is based on consensus. It is based on compromise. It is based on conciliation. It is based on the fact that you have to develop cooperation in order to get anything done. It is not unusual. If historically we took the position: You missed your chance because there are disparate views, so that there would be no opportunity to further discuss or negotiate—we missed our chance? Are we talking about scoring political points? Are we talking about what is the best tax policy for this country?

I am concerned we are taking a political U-turn away from the message in the last election. I was in that last election. I heard loudly and clearly. I don't blame the people of Maine or across this country for their deep-seated frustration. They are right. There was too much partisanship and too much polarization.

What's required now is leadership. We need leadership for this country. They are thirsting for a strong leadership, an honorable leadership that leads us to a common goal. No one expected unanimity in the Senate but we would give integrity to this process to allow it to work and not cynically say who is winning and who is losing today politically. We are not shedding the political past. We have made a political U-turn. We are returning to it.

This isn't about party labels. This isn't whether it is good for Republicans or good for Democrats. It is what is good for America. It is not about red States and blue States. It is about the red, white, and blue. Fact is that with every day that we delay, there are millions of taxpayers in all 50 States who literally will pay the price for our inaction.

I hope we can find a way. What could be of higher priority than to be able to debate and to vote on our respective positions, to give a vote on AMT relief and expiring tax provisions that is so important that a majority of Senators support? Is there anyone in this Chamber who does not think we should extend expiring tax relief? I know we can build the threshold for the 60. It is imperative we do it. It is inexcusable, frankly, that on the process of debating, we cannot reach an agreement. We are failing the American people on a colossal scale. We are held up by arcane procedural measures that could be worked out, if only we reached across the political aisle.

If my remarks sound familiar, then well they should because regrettably I said much the same thing in February of last year at the start of this Congress on another pressing issue of our time. Sadly as we now approach the end of the first session of the 110th Congress, things seemed to have not changed very much. I would hope when we finally adjourn after hopefully extending this critical tax relief that

each and every one of us will return to our homes and when the clock strikes midnight on December 31, that we all make a New Years resolution to make the next Congress a more productive session with Members reaching across the aisle looking for consensus. If we do not, there is one thing that is for certain; the American public is watching.

EXECUTIVE SESSION

NOMINATION OF MARK STEVEN DAVIS TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Mark Steven Davis, of Virginia, to be United States district judge for the Eastern District of Virginia.

The ACTING PRESIDENT pro tempore. We now have 10 minutes of debate equally divided between the chairman and the ranking member. Who yields time?

If no one yields time, time will be charged equally to both sides.

The Senator from Missouri.

Mr. BOND. Mr. President, may I ask for 1 minute from the ranking member.

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

Mr. BOND. Mr. President, my thanks to the committee leaders for bringing forward the nominations to the Senate of Judge Greg Kays and Stephen Limbaugh to be Federal district court judges for the Western and Eastern District Courts of Missouri. Both Judge Kays and Judge Limbaugh are outstanding nominees for the Federal bench. They share bipartisan support, have fine legal minds, long records of public service, and represent the values and character of my Missouri constituents.

Both men's modesty matches the modest size of their Midwestern hometowns. But as we have seen so many times in our history, great men, men of learning, men of intellect and excellence, come from modest places.

One should not doubt this to be the case. Values of fairness, service, kindness, community, learning, self-reliance, and personal responsibility are those that we value in our constituents, in our small-town communities, and we should value in our judges. I think this confirmation process has succeeded in producing two such men.

I thank the Chair, I thank my ranking member, and I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I have spoken to the chairman of the Judiciary Committee and to the Republican leader. We will enter a formal unanimous

consent for the RECORD at a subsequent time, but it appears at this time we will have a vote on one of the remaining two judges at 3:30, and the Judiciary Committee chair, Senator LEAHY, has agreed we will not have to vote on the second one. So there will be one vote on or about 3:30 this afternoon.

Mr. LEAHY. Mr. President, will the Senator yield on the leader's time?

I wanted to have a rollover on this one, and do the other two at whatever time the leader prefers by voice vote.

Mr. REID. I thank the Senator very much. That is wonderful. We can do those before lunch, then.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent to have printed in the RECORD the resumes of these three candidates. They were voted on unanimously by voice vote of the committee, and I think their confirmation is assured.

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

MARK STEVEN DAVIS

UNITED STATES DISTRICT JUDGE FOR THE
EASTERN DISTRICT OF VIRGINIA

Birth: 1962, Portsmouth, Virginia.
Legal Residence: Portsmouth, Virginia.
Education: Longwood University, 1980-1982; no degree; University of Virginia, 1982-1984; B.A., May 1984; Washington and Lee University School of Law; J.D., May 1988.

Primary Employment:

Staff Assistant, U.S. Senator John W. Warner, 1984-1985.

Law Clerk to Hon. John A. MacKenzie, U.S. District Court, Eastern District of Virginia, 1988-1989.

Law Firm of McGuire Woods LLP: Associate, 1989-1996; Partner, 1996-1998.

Partner, Law Firm of Carr & Porter LLC (no longer in existence), 1998-2003.

Judge, Third Judicial Circuit of Virginia (Portsmouth Circuit Court), 2003-Present; Chief Judge, July 2006-Present.

Selected Activities:

Virginia State Bar, 1988-Present: Litigation Section Young Lawyers Committee, 1992-1996.

Board of Visitors, Regent University School of Law, 2004-Present.

American Bar Association, 1989-1993.

Federal Bar Association, 1990-1998.

Virginia Bar Association, 1989-Present.

James Kent American Inn of Court, 2005-Present: Pupilage Team Leader, 2007.

Chesapeake Bay Bridge and Tunnel Commission: Commissioner, 1999-2003; Secretary/Treasurer, 2000-2003.

Virginia International Terminals, Inc.: Board of Directors, 2000-2003; Secretary and Executive Committee, 2002-2003; Audit Committee, 2000-2003.

Recipient, Top 40 Under 40, Dolan's Virginia Business Observer Newspaper, 2001.

Recipient, Legal Elite Listing, Virginia Business Magazine, 2002.

ABA Rating: Unanimous "Well Qualified."

DAVID GREGORY KAYS

UNITED STATES DISTRICT JUDGE FOR THE
WESTERN DISTRICT OF MISSOURI

Birth: 1962, Kansas City, Missouri.
Legal Residence: Missouri.

Education: No degree, Drury University, 1981-1982; B.S., Southwest Missouri State University, 1985; J.D., University of Arkansas School of Law, 1988.

Primary Employment: Attorney, Miller and Hutson Law Firm, 1988-1989. Assistant

Public Defender, Office of the Special Public Defender, 8/1989-12/1989. Prosecutor, Laclede County Prosecuting Attorney's Office: Assistant Prosecuting Attorney, 1988-1989; Chief Assistant Prosecuting Attorney, 1989-1991; Prosecuting Attorney, 1991-1995. City Attorney, Lebanon, Missouri, 1992-1994. Judge, State of Missouri: Associate Circuit Judge, Laclede County Circuit Court, 1995-2004; Presiding Circuit Court Judge, 26th Judicial District, 2005-present.

Selected Activities: Board Chairman, First Christian Church, 2007-present; Member, Missouri Task Force on Alternative Sentencing, 2006-2007; Certificate Recipient, National Judicial College, 2007; Recipient, Supreme Court of Missouri Permacore Awards, 2006 and 2007; Adjunct Instructor, Drury University, 1992-2004; Member, Laclede County Bar Association: President, 1992; Member, Missouri Bar Association.

ABA Rating: Substantial majority "Qualified"/Minority "Not Qualified."

STEPHEN NATHANIEL LIMBAUGH, JR.

UNITED STATES DISTRICT JUDGE FOR THE
EASTERN DISTRICT OF MISSOURI

Birth: 1952; Cape Girardeau, Missouri.
Legal Residence: Cape Girardeau, Missouri.
Education: B.A., Southern Methodist University, December 1973; J.D., Southern Methodist University School of Law, December 1976; Masters of Law in the Judicial Process, University of Virginia School of Law, May 1998.

Primary Employment: Associate, Limbaugh, Limbaugh & Russell, 1977-1978; Assistant Prosecuting Attorney, Office of Prosecuting Attorney, Jackson, Missouri, 1978; Prosecuting Attorney, Office of Prosecuting Attorney, Jackson, Missouri, 1979-1982; Shareholder/Partner, Limbaugh, Limbaugh, Russell & Syler, P.C., 1983-1987; Circuit Judge, 32nd Judicial Circuit of Missouri, 1987-1992; Supreme Court Judge, Supreme Court of Missouri, 1992-Present; Chief Justice, 2001-2003.

Selected Activities: Missouri Bar, 1977-Present: Fellow, Missouri Bar Foundation, 1997-Present (Board member, 2001-2003). American Bar Association, 1977-Present: Life Fellow, American Bar Foundation; Litigation Section, 1985-Present; Judicial Administration Division, 1987-Present. The Federalist Society, 1993-Present. Judicial Conference of Missouri, 1987-Present: Legislative Steering Committee, 1989-1991; Executive Council, 1999-2003; Presiding Officer, 2001-2003. Supreme Court of Missouri Committees: Chair, Commission on Judicial Dept. Education, 1999-2001, 2005-Present. Appellate Judicial Commission for the Missouri Nonpartisan Court Plan: Chair, 2001-2003. State Historical Society of Missouri: Board of Trustees, 2005-Present; First Vice President, 2007-Present. Life Regent, National Eagle Scout Association. Political Advocacy and Legislative Achievement Award, Adoption and Foster Care Coalition of Missouri, 2001. Distinguished Alumnus Award for Judicial Service, SMU Dedman School of Law, 2007.

ABA Rating: Unanimous "Well Qualified."

Mr. WARNER. Mr. President, I rise today in support of an outstanding Virginian, the Honorable Mark S. Davis, who has been nominated by the President to serve as an article III judge on the U.S. District Court for the Eastern District of Virginia. I am pleased to note that Judge Davis also enjoys the strong support of my colleague, Senator WEBB.

Judge Davis has been nominated to fill the seat that was vacated by Judge T. S. Ellis, III, who has served as an active judge in the Eastern District of Virginia for more than 19 years.

I have had the privilege of knowing Mark Davis for more than two decades. He worked as an intern in my office while attending the University of Virginia, and then later, in 1984, he began his professional career as a staff assistant in my office before he went to law school. After earning his J. D. from the Washington & Lee University School of Law in 1988, he served as a law clerk for the Honorable John MacKenzie on the U.S. District Court for the Eastern District of Virginia.

Subsequent to his clerkship, he entered private legal practice, as a litigation attorney on cases before both Federal and State courts in several areas, including tort, maritime, and municipal and employment law. In 2003, the Virginia General Assembly unanimously confirmed him to serve as a judge on the Third Judicial Circuit of Virginia in Portsmouth, VA; today, he serves as chief judge of this five-judge circuit.

In my view, Judge Davis is eminently qualified to serve on the U.S. District Court for the Eastern District of Virginia. In addition to having the support of his home state Senators, he also received the highest recommendation of the Virginia State bar and the American Bar Association.

I thank the Judiciary Committee for favorably reporting this exemplary nominee to the full Senate, and I urge my colleagues to vote to confirm him.

Mr. WEBB. Mr. President, today it is my distinct pleasure to offer my support along with my colleague Senator WARNER for the nomination of Judge Mark Davis to be a judge on the U.S. District Court for the Eastern District of Virginia.

The career of this nominee is impressive. Judge Davis is regarded as a patient, thoughtful individual who exhibits the highest degree of ethical conduct and professionalism. After graduating law school, Judge Davis began his legal career as a law clerk to Judge John A. MacKenzie who served as judge on the U.S. District Court for the Eastern District of Virginia, 1988-1989. In 1989, Judge Davis joined McGuire Woods, LLP, where he worked as a partner from 1996 until 1998. Judge Davis has also worked as partner at Carr & Porter LLC, 1998-2003. Since 2003, Judge Davis has served on the Third Judicial Circuit of Virginia, and has been the chief judge since 2006.

The Virginia Bar Association rated Judge Davis as "highly qualified." Judge Davis's written opinions reflect his keen intellect, and the extent to which he values communicating his reasoning to counsel and litigants. Further, Judge Davis is active in myriad community and civic organizations. Judge Davis received his B.A. in government from the University of Virginia in 1984, and his J.D. from Washington and Lee University School of Law in 1988.

The Constitution assigns a critically important role to the Senate in the advice and consent process related to

nominations for the Federal judiciary. These judgeships are lifetime appointments, and Virginians expect me and Senator WARNER to take very seriously our constitutional duties. It is essential that the nominee be respectful of the Constitution, impartial, and balanced toward those appearing before him or her.

In light of these criteria, Senator WARNER and I undertook a careful and deliberative process to find the most qualified judicial nominees. Our collaboration involved a thorough records review and rigorous interviews. We are of the opinion that Judge Davis meets these high standards. He was on the joint list of recommended judicial nominees submitted to President Bush last year. We are pleased that President Bush has chosen to respect our diligent bipartisan work.

I want to thank you, Mr. President, for the opportunity to make these remarks about this outstanding Virginian. In particular, I want to express my gratitude for the expeditious way the Senate has moved the nomination of Judge Davis through the process during the 110th Congress. Again, it is with pride that I join Senator WARNER in commending Judge Mark Davis to each of my colleagues in the Senate; and I ask my fellow Senators to vote to confirm his nomination to the U.S. District Court for the Eastern District of Virginia.

Mr. SPECTER. Mr. President, I wish to use the balance of my time to talk about the procedures on the Energy bill.

I spoke yesterday about the problem created by the so-called procedure of filling the tree. It is my hope that we will return to the Energy bill and we will have an opportunity to offer amendments on the bill—the global warming bill, I should specify. Last week, I filed a series of amendments, and I hope we will return to the bill and will not have the procedure of filling the tree thwart the opportunity for Senators to offer amendments.

As I spoke at some length yesterday, we have devolved in this body into a procedure where the trademark of the Senate—that is, where a Senator is able to offer virtually any amendment on any matter at any time—has been undercut. This has been a practice which has been growing but was used not at all in bygone years. Senator Mitchell then used it 9 times, Senator Lott matched him with 9, Senator Frist matched him with 9, and Senator REID has now used it 12 times.

Regrettably, when the tree is filled—an arcane practice not understood very broadly—and then cloture is not invoked, people think that Republicans are opposed to considering global warming. The fact is that some 32 Republicans voted for cloture on the motion to proceed. So it is my hope we will have an opportunity to debate this very important subject and that there will be procedural steps taken so amendments can be offered. The tradi-

tion of the Senate in the past has been to have legislation offered, to debate, and if people are opposed, to filibuster, and to have the issues considered. But we have found in modern days that bills involving very important matters, such as the Ledbetter Fair Pay Act, Senate bill 1843, got very short shrift indeed. So it is my hope we will change the procedures.

I filed a resolution with the Rules Committee in February of 2007 to have a change in the rules, but in the interim I hope we can alter our procedures to take up these very important amendments.

I thank the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be.

The yeas and nays are ordered.

Mr. LEAHY. Mr. President, today the Senate will confirm three more nominations for lifetime appointments to the Federal bench.

The first nomination we consider is that of MARK DAVIS of Virginia to fill a vacancy in the Eastern District of Virginia, and I commend the Virginia Senators on this nomination. After years of controversial nominations, Senators WARNER and WEBB have worked successfully with the White House on a series of recent nominations for district and circuit court seats, including that of Judge G. Steven Agee of Virginia, who was confirmed to a seat on the Fourth Circuit last month.

I was pleased to accommodate Senator BOND's request that we proceed promptly in committee to consider the nominations of David Kays and Stephen Limbaugh to vacancies in the Western and Eastern Districts of Missouri. Both nominees have the support of Senator McCASKILL. I wish Justice Ronnie White, who went on to become Missouri's first African-American chief justice, had received similar consideration when President Clinton nominated him to the Eastern District of Missouri. Instead, more than 2 years after he was nominated, and 2½ months after he was reported out of the Judiciary Committee for a second time, his nomination was voted down on a party line vote, not a single Republican Senator voting to confirm him. I also recall many of President Clinton's judicial nominees who were stalled because of anonymous Republican objections to their politics or their practice area. One of the two nominees from Missouri that we consider today is Rush Limbaugh's cousin. A similar lineage would have resulted in a pocket filibuster when the Senate was controlled by a Republican majority during the Clinton administration. So today, in contrast to the treatment of President Clinton's nominees, we proceed to consider these two nominations.

I noted last week the sudden concern of the minority leader for district court nominations. Perhaps he did not have a chance to see my statement from earlier in the week in which I noted that with Republican cooperation, we have the opportunity this work period confirm five nominees already reported favorably by the Judiciary Committee? Of course, today we would have more than those five nominations on the Senate's Executive Calendar had Republicans not stalled this President's nominations of Judge Helene White and Ray Kethledge to the Sixth Circuit, and the nomination of Stephen Murphy to the Eastern District of Michigan. As I said last week, with cooperation from across the aisle, the Senate is poised to have confirmed four circuit court judges and 11 district court judges before the Fourth of July recess, confirming a total of 15 lifetime appointments.

I recall Senator SPECTER's frustration when he was chairman with a Republican majority at the end of the last Congress, and Republican holds prevented the confirmation of 14 district court nominations. Democrats on the Judiciary Committee had worked hard to expedite the nominations at the end of the last Congress. Many of them were for vacancies deemed judicial emergencies, including three in one Federal district in Michigan where several judges of senior status—one over 90 years old—continued to carry heavy caseloads to ensure that justice was administered in that district. Now, after the successful efforts of the Senators from Michigan in conjunction with the White House, I hope Republicans will not object to filling three more judicial emergency vacancies in Michigan.

The complaints by the minority leader and his party about district court nominations ring as hollow as their complaints that Senate Democrats did not make best efforts to meet the goal he and the majority leader set of moving three circuit court nominations by Memorial Day. As at the end of the last Congress with those 14 district court nominations, Republicans resisted expediting the committee's consideration of the Michigan nominations before Memorial Day. They badgered the nominees, and sent scores of written follow up questions. At the May 7 hearing, the Republicans chose to complain that the committee was moving too fast, before the committee had received updated ABA ratings on the nominations. They pressed Judge White with scores of questions, failing to pose those same questions to Mr. Kethledge, a candidate for the same circuit. They demanded an extremely rare closed hearing to further question Judge White. Given their actions and their resistance to the White House's package of nominations—nominations made by this President—they made it impossible for the Committee to consider and report the Michigan nominations before the Memorial Day recess.

We have now received the updated ABA rating for Judge White's nomination. 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 she was nominated by President Clinton and the Republican Senate majority refused to consider her nomination.

Ultimately, the Republican-led Senate left open five vacancies on the Fourth Circuit and four on the Sixth Circuit. With the Agee confirmation last month, we have already reduced vacancies on the Fourth 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 that circuit during the last 2 years of the Clinton Presidency. If Republicans cooperate in considering the Michigan nominees, we will have filled every vacancy in the Sixth Circuit. Overall, when Republicans ran the Senate and were stalling consideration of President Clinton's nominees, circuit vacancies rose from 11 to 26, and it reached 32 during the transition to President Bush. We are in position to reduce circuit vacancies by three-quarters, to an historic low.

In contrast to the Republican Senate majority that used the Clinton years to more than double circuit court vacancies around the country, the Senate has already reduced circuit court vacancies by almost two-thirds. We are poised to complete Senate consideration of the two Sixth Circuit nominations. If the Republican minority allows that progress, yet another circuit will be without any vacancies. In fact, we would reduce the total number of circuit court vacancies across the Nation to single digits for the first time in decades.

If instead we focus on the controversial nominations as the Republicans want, we run the risk of embroiling the committee and the Senate in months of debate, foreclosing the opportunity to make progress where we can. We saw what happened with our last contentious nomination—that of Leslie Southwick. It took 5½ months from the time of the hearing to his confirmation.

The minority leader and the Wall Street Journal continue to point to the confirmation of 15 circuit judges in 1999 and 2000. Sometimes, the number is 17. Of course, their mythical “statistical average” of selected years ignores the crises the Republicans had created by not considering circuit nominees in 1996, 1997 and 1998, the fact that they refused to confirm a single circuit nominee during the entire 1996 session, the fact that they returned 17 circuit court nominees without action to the White House in 2000, the public criticism of Chief Justice Rehnquist that helped moderate their stalling and the fact that they more than doubled circuit court vacancies while pocket filibustering Clinton nominees.

The minority leader only reaches this mythical statistical by taking ad-

vantage 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. 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, hardly a Democratic partisan, to criticize them publicly. 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 eight 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.

In stark contrast, the Democratic Senate majority has worked steadily and steadfastly to lower vacancies and make progress, and we have.

I have placed the two Michigan Sixth Circuit nominations on the agenda for the committee's business meeting this week. With cooperation from the Republicans, we can consider and vote on these nominations at that time. That should provide the Senate with the opportunity to consider them before the Fourth of July recess, bringing to four the number of circuit court nominees confirmed this year. Four would meet the Republican average for 1996 and 2000, and beat their total in the 1996 session by four.

The history is clear. 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. After today, there will be just 44 total 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.

When Republicans were busy pocket filibustering Clinton nominees, Federal judicial vacancies grew to more than 100, with more than 30 circuit vacancies.

When I became Chairman 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 four 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 and are heading to less than 40. 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. It bears repeating—circuit vacancies have been reduced by almost two-thirds and have not been this low since 1996, when the Republican tactics to slow 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.

The President has not nominated anyone to 16 of the 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.

In fact, our work has led to a reduction in vacancies in nearly every circuit. 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.

Despite this progress, of course, 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.

The Republican effort to create an issue over judicial confirmations is

so sorely misplaced. Last month we experienced the greatest rise in unemployment in a single month in over two decades, bringing the total job losses for the first 5 consecutive months of this year to over 325,000. Americans are now facing increasing burdens from the soaring price of gas, high food prices, rising unemployment and a home mortgage foreclosure and credit crisis.

This year we have seen the worst plunge in new homes sales in two decades. The press reported that new home sales fell 8.5 percent in March, the slowest sales pace since October 1991, and the median price of a home sold 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.

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 and 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. Last week, the price of oil soared to nearly \$139 a barrel, nearly twice what it was at this time last year. When President Bush took office, the price of gas was \$1.42 a gallon. Today, it is at an all-time high of over \$4.00 a gallon.

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.

Today we confirm three nominations for lifetime appointments. The first, Mark S. Davis, currently serves as Chief Judge of the Portsmouth Circuit Court, Third Judicial Circuit of Virginia. Prior to his appointment to the bench in 2003, Judge Davis worked in private practice at several Virginia law firms.

David Gregory Kays currently serves as the presiding circuit court judge for the Twenty-Sixth Judicial Circuit for the State of Missouri, where he has served since his first election in 2005. Previously, Judge Kays served as an

associate circuit judge for Laclede County Circuit Court in Missouri and as chief assistant prosecuting attorney in Laclede County.

Stephen N. Limbaugh is a supreme court judge and former chief justice on the Supreme Court of Missouri. Previously, Judge Limbaugh was appointed and then elected Circuit Judge for the 32nd Judicial Circuit of Missouri. Before his career on the State bench, Judge Limbaugh was an elected prosecuting attorney and also worked in private practice.

So today we make progress, and the Senate is likely to confirm three additional lifetime appointments to the Federal bench. I congratulate the nominees and their families on their confirmation today.

Mr. President, how much time remains on either side?

The ACTING PRESIDENT pro tempore. Two minutes twenty seconds for the Senator from Virginia, and 33 seconds to the Senator from Pennsylvania.

Mr. LEAHY. Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent to yield 1 minute to the Senator from Virginia.

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

Mr. WARNER. Mr. President, I was very privileged to submit the name of Mr. DAVIS to the President of the United States, and I am greatly appreciative to the Senate to now come to the question of his confirmation. But I think it would be interesting if I were to point out to all those following it that this individual was a former member of my staff.

I think it shows the incentive of those many staff persons all throughout our system who contribute so much to the work of our individual Senators that they too can, through their service, lay the foundation to someday achieve this recognition by the Senate in which they worked.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. LEAHY. I yield to Senator WEBB on my time, Mr. President.

Mr. WEBB. Mr. President, I very quickly wish to associate myself with the remarks of the senior Senator from Virginia and to emphasize that we jointly examined a whole array of nominees for this position. This individual, perhaps because of and perhaps in spite of the fact he worked for the senior Senator from Virginia, is considered highly qualified by Members on this side of the aisle.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I would commend one more time the two Senators from Virginia, both dear friends of mine, for the fact we worked as one

Democrat, one Republican with the White House to get us past this impasse. And I commend President Bush for withdrawing controversial nominees and working toward consensus nominees. That is why this nominee will go through, I suspect unanimously, in this body.

I also commend the two Senators from Missouri, Senators BOND and McCASKILL, for working together.

Has all time been yielded back?

The ACTING PRESIDENT pro tempore. Yes, it has.

The question is, Will the Senate advise and consent to the nomination of Mark Steven Davis, of Virginia, to be a United States district judge for the Eastern District of Virginia?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from New York (Mrs. CLINTON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. GRAHAM) and the Senator from Arizona (Mr. MCCAIN).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 148 Leg.]

YEAS—94

Akaka	Domenici	Mikulski
Alexander	Dorgan	Murkowski
Allard	Durbin	Murray
Barrasso	Ensign	Nelson (FL)
Baucus	Enzi	Nelson (NE)
Bayh	Feingold	Pryor
Bennett	Feinstein	Reed
Biden	Grassley	Reid
Bingaman	Gregg	Roberts
Bond	Hagel	Rockefeller
Boxer	Harkin	Salazar
Brown	Hatch	Sanders
Brownback	Hutchison	Schumer
Bunning	Inhofe	Sessions
Burr	Inouye	Shelby
Cantwell	Isakson	Smith
Cardin	Johnson	Snowe
Carper	Kerry	Specter
Casey	Klobuchar	Stabenow
Chambliss	Kohl	Stevens
Coburn	Kyl	Sununu
Cochran	Landrieu	Tester
Coleman	Lautenberg	Thune
Collins	Leahy	Vitter
Conrad	Levin	Voinovich
Corker	Lieberman	Warner
Cornyn	Lincoln	Webb
Craig	Lugar	Whitehouse
Crapo	Martinez	Wicker
DeMint	McCaskill	Wyden
Dodd	McConnell	
Dole	Menendez	

NOT VOTING—6

Byrd	Graham	McCain
Clinton	Kennedy	Obama

The nomination was confirmed.

NOMINATION OF DAVID GREGORY KAYS TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

NOMINATION OF STEPHEN N. LIMBAUGH, JR., TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

The ACTING PRESIDENT pro tempore. The clerk will report the remaining nominations en bloc.

The legislative clerk read the nominations of David Gregory Kays, of Missouri, to be United States District Judge for the Western District of Missouri; Stephen N. Limbaugh, Jr., of Missouri, to be United States District Judge for the Eastern District of Missouri.

VOTE ON NOMINATION OF DAVID GREGORY KAYS

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consent to the nomination of David Gregory Kays, of Missouri, to be U.S. district judge for the Western District of Missouri?

The nomination was confirmed.

VOTE ON NOMINATION OF STEPHEN N. LIMBAUGH, JR.

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consent to the nomination of Stephen N. Limbaugh, Jr., to be U.S. district judge for the Eastern District of Missouri?

The nomination was confirmed.

The ACTING PRESIDENT pro tempore. Under the previous order, the motions to reconsider are considered made and laid upon the table.

The President will immediately be notified of the Senate's action.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. The Senate will now resume legislative session.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:48 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

CONSUMER-FIRST ENERGY ACT OF 2008—MOTION TO PROCEED—Continued

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT REQUEST—AUTHORITY FOR COMMITTEE TO MEET

Mr. REID. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during this session of the Senate.

Mr. COCHRAN. Mr. President, on behalf of the Republican leader, I object. The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I understand the objection of my good friend from Mississippi. He was not objecting on his own but for someone else.

The hearing we were going to conduct was a hearing entitled "Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?"

This morning, Senator FEINSTEIN, as chair of the subcommittee, began chairing a very important hearing on interrogation tactics. The hearing featured a report by the Department of Justice inspector general on tactics at Guantanamo that amounted to torture. The hearing was interrupted by three floor votes, and the chair recessed the hearing until 2 p.m.

As you know, we have our weekly caucuses starting at 12:30. But now the minority is objecting to the committee meeting by invoking the 2-hour rule. What this means is that 2 hours after we come into session, there has to be consent to conduct hearings; otherwise, you have to do them during the first 2 hours we are in session. It is very rare there is an objection, but there is today. So I have no alternative but to recess the Senate this afternoon to allow the hearing to continue.

The Republicans may not want these abuses to come to light, but I think the American people have a right to know. This is part of a pattern of obstructionism by my friends on the Republican side.

I want the Senate to debate a bill to reduce gas prices and I want the Senate to debate a bill to extend tax credits for renewable energy, and now they do not want the Judiciary Committee to hold a hearing about coercive interrogation tactics. They can try to use Senate rules to silence these debates, but I will use the rules at this time to allow the Judiciary Committee to continue the hearing. As soon as the hearing is over, we are going to be out here to talk about gas prices.

I would hope this is framed with a picture that there is a Presidential election going on. We have one Presidential candidate who wants to do something about these high gas prices, wants to do something about the bill to extend tax credits for renewable energy, and we have another candidate who is opposed to this. We know who that candidate is: it is the Senator from the State of Arizona. And I would think that my friend, the Senator from Arizona, who is the Republican nominee, would be concerned about this delaying tactic not to allow the Judiciary Committee to hold a hearing on torture. That is what it amounts to.