issue is not about getting more judges, it is about confirming quality judges who will uphold the Constitution. Isn't this our clear constitutional responsibility?

Part of the reason I decided to run for the Senate was my desire to see judicial nominees receive an up-or-down vote and my desire to restore a restrained judiciary, bound by our Constitution, laws and treaties. Too often fundamental liberties and important decisions are taken away from the American people by judicial fiat. The Constitution gives the American people, through their elected officials, the right of self-determination by allowing legislative bodies closest to the people decide the important issues of the day.

You don't have to look far to find examples of judges overriding the people's will—one recent example affected my home state of Oklahoma. Last month, in a 5–4 decision, the Supreme Court held that the death penalty is an unconstitutional punishment for the rape of a child. The majority assumed a ''national consensus'' that the death penalty for child rape was unconstitutional and then substituted its own independent judgment for that of the people and the law, declaring it inconsistent with ''evolving standards of decency.'' Yet Oklahoma, along with five other States, had laws permitting the death penalty for such offenses. Congress had even adopted the penalty, a fact somehow overlooked by the Court. One decision by five unelected judges struck those laws down.

Americans are right to be outraged by this kind of judicial activism. Oklahomans chose to protect their children by allowing the death penalty for anyone convicted twice of rape, sodomy or lewd molestation involving children under 14. Now, because a handful of judges halfway across the country declared the state's decision to be inconsistent with so-called ''evolving standards of decency,'' their sound judgment has been overruled.

Given this example and many others like it, it is clear that Americans are concerned about the Senate's treatment of judicial nominees. If further evidence is needed to prove the point, a recent Rasmussen poll shed light on the issue. It found that, by a 69 percent to 20 percent margin, voters believe that judges should interpret the law as it is written. Sixty-one percent say they trust voters more than judges or elected officials to decide important decisions facing the country.

The obstruction that has occurred in the 110th Congress is unacceptable. It is time to break this stalemate and confirm more of the President's highly qualified nominees.

I ask unanimous consent that the letters to which I referred be printed in the RECORD.

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

I am incensed by the U.S. Senate's lack of action on the federal judicial nominees President Bush has proposed for seats on district and appeals courts. For this reason, I am urging you to use your influence to urge the Judiciary Committee and the Majority Leader to prioritize this important issue.

Many of the nominees for these important positions are well-qualified and have already gone through the Senate's confirmation process before. There is no reason not to consider their candidacy for a federal judgeship. As a member of the Center for Moral Clarity, a national Christian grassroots organization, I hope you will take action in the coming weeks on an issue that has already seriously damaged the Senate's reputation.

Thank you for considering my opinion.

LOU BABER,
*Oklahoma City, OK.*

---

Please make a vote for the judicial nominees in the confirmation process. They deserve fair treatment in this. We need good judges.

SAMANTHA JONES,
*Claremore, OK.*

---

DEAR DR. COBURN, will you please press the other senators to give the judicial nominees an up or down vote pronto? That is their job and so overdue. Thank you for all your good work on behalf of the unborn and for our country.

Sincerely,

PEGGY LOW,
*Yukon, OK.*

---

Please push to have the judicial nominees to come to the full Senate for a vote. Thank you.

BARBARA TIPTON,
*Chandler, OK.*

---

I want to applaud and thank Senator Coburn for boldly standing up for the many judicial nominees that are blocked in the senate. KEEP IT UP! That is what you are elected to do. We in Oklahoma that understand this are 1000 percent behind you.

Go with our blessings!

JOHN and PAM RAWLINS,
*Ponca City, OK.*

Mrs. CLINTON. Mr. President, I am pleased that the Senate today confirmed the nomination of two New Yorkers to the Federal bench.

Kiyo Matsumoto had served as a magistrate judge in the Eastern District of New York since 2004. Prior to her appointment, Judge Matsumoto served in the U.S. Attorney's Office for the Eastern District of New York for more than two decades and held the position of deputy chief of the civil division in that office. Judge Matsumoto has taught as an adjunct law professor at the New York University School of Law as well as worked as a legal research and writing instructor at the Brooklyn Law School. Judge Matsumoto has also served as a member of the Federal Court Committee of the City of New York Bar. Now that she has been confirmed, Judge Matsumoto becomes only the eighth active Asian-Pacific American Senate-confirmed judge on the Federal bench out of approximately 850 judges nationwide.

Paul Gardephe was most recently a partner and chair of the Litigation Department at the New York law firm of Patterson, Belknap, Webb & Tyler LLP. Previously, Mr. Gardephe was a special counsel for the U.S. Department of Justice Inspector General's Office. He has also worked for the law department of Time Inc., where he held the positions of vice president, litigation deputy general counsel, and Associate General Counsel. Prior to this work, Mr. Gardephe served in the U.S. Attorney's Office for the Southern District of New York for nearly 10 years. For the past 15 years, Mr. Gardephe has taught trial advocacy at New York Law School as an adjunct professor.

The careers of both nominees have been marked by a record of achievement and a commitment to public service. I am certain that each of these individuals will be a credit to the Federal judiciary and will continue to exhibit the qualities that have defined their entire careers: devotion to justice and respect for the rule of law. I am proud to have supported each of their nominations, and I commend Senator SCHUMER and the members of the Judiciary Committee on their diligence in ensuring that our Federal courts are served by men and women of such distinction.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The Senator from Pennsylvania is recognized for up to 1 hour.

## CONFIRMATION PROCESS

Mr. SPECTER. Mr. President, I ask unanimous consent that the résumés of the two nominees who have been confirmed be printed in the RECORD. The résumés show these two individuals to be well qualified.

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

PAUL GARDEPHE

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Birth: 1957, Fitchburg, Massachusetts.

Legal Residence: New York.

Education: B.A. and M.A., magna cum laude, University of Pennsylvania, 1979; J.D., Columbia Law School, 1982—Articles Editor, Columbia Journal of Law and Social Problems.

Employment:

Law Clerk, Honorable Albert J. Engel, United States Circuit Judge for the Sixth Circuit, 1982–1983.

Litigation Associate, Patterson Belknap Webb & Tyler LLP, 1983–1987.

Assistant United States Attorney, United States Attorney's Office, Southern District of New York, 1987–1996—Assistant United States Attorney, 1987–1992; Chief, Appeals Unit, Criminal Division, 1992–1995; Senior Litigation Counsel, 1995–1996.

Consultant (Special Counsel), Inspector General's Office, United States Department of Justice, 1996–2000, 2001–2003.

Time Inc. Law Department, 1996–2003—Associate General Counsel, 1996–1998; Deputy

General Counsel, Litigation, 1998–2000; Vice-President, Deputy General Counsel, 2000–2003.

Partner, Patterson Belknap Webb & Tyler LLP, 2003–Present—Chair, Litigation Department.

Selected Activities: Member, American Bar Association; Member, Federal Bar Council; Member, New York State Bar Association; Member, Disciplinary Committee, New York State Supreme Court, 1st Department; Former Member, Rules Committee, U.S. Court of Appeals for the 2nd Circuit.

ABA Rating: Unanimous ''Well Qualified.''

KIYO A. MATSUMOTO

UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Birth: August 29, 1955; Raleigh, North Carolina.

Legal Residence: New York.

Education: B.A., with high honors, University of California at Berkeley, 1976; J.D., Georgetown University Law Center, 1981—Legal Research and Writing Fellow, 1980–1981. No degree, New York University, School of Continuing and Professional Studies, 1989.

Primary Employment: Associate, MacDonald, Hoague & Bayless, 1981–1983; Assistant United States Attorney, United States Attorney's Office, Eastern District of New York, 1983–2004; Magistrate Judge, United States District Court for the Eastern District of New York, 2004–Present.

Selected Activities:

Adjunct Professor of Law, New York University School of Law, 1998–2004; Legal Research and Writing Instructor, Brooklyn Law School, 1985–1986; Vice Chair, New York City Mayor's Committee on City Marshals, 2003–2004; Outstanding Public Service Award Recipient, New York County Lawyers' Association, 2004; Federal Bar Council, 1995–Present—Member, Board of Trustees, 2000–Present—Vice Chair, approx. 2004–2007; Member, Committee on the Second Circuit Courts, 1995–Present.

New York Bar Association, 1994–Present; Member, United States Department of Justice, Civil Chiefs' Working Group, 2001–2003; Member, Asian American Bar Association of New York, 1990–Present; Member, Asian American Legal Defense and Education Fund, 1990–2005.

ABA Rating: Unanimous ''well qualified.''

Mr. SPECTER. Mr. President, let me emphasize to my colleagues on the Republican side who have requested time to speak that we do have an hour. I will speak for only a few minutes. We have the distinguished Senator from Iowa who is available to speak next. We are open to have others come to take part of the time.

Today, the other Republican members of the Judiciary Committee chose not to attend an Executive Business Meeting because there were no judges on the agenda. We have seen that there is tremendous partisanship, acrimony, and bitterness about the facts regarding the whole confirmation process in this Chamber at the present time. We find a situation where President Bush's confirmation numbers are far behind President Clinton's in the comparable period. President Clinton, in the last 2 years of his Presidency, had 15 circuit judges confirmed, 57 district judges confirmed, contrasted with 10 circuit judges for President Bush and 44 district court judges. We have found, regrettably, that this pattern has been evolving over the past couple decades. We have seen in the last 2 years of President Reagan's administration, when the Senate was controlled by the Democrats, the confirmation process was slowed. Similarly, in the last 2 years of President George H.W. Bush, the Democrats controlled the Senate, and the process was slowed. Then, for 6 years during President Clinton's administration, the last 6, the Senate was controlled by Republicans and the matter was exacerbated. There were determinations to not confirm President Clinton's judges. I spoke out at that time and voted to confirm President Clinton's qualified judges and disagreed with my caucus because I thought we ought not to be partisan and impede the confirmation of judges due to the importance and public interest of having the courts handle litigation in a timely way. But the situation was ratcheted up, first by Democrats, and then by Republicans.

Then we saw this Chamber badly divided in 2005, with filibusters by the Democrats and threats by Republicans to put into effect the nuclear or constitutional option to change the rules on filibusters. So the matter has gone from bad to worse. It is hard to see how it can get much worse, but it seems to be getting worse. It is my hope we will find a way to break this cycle.

What we find is the minority party, whichever party that is, has been turned into recidivists. We have a cycle of recidivism blocking the confirmation of judges. Nobody knows for sure what is going to happen in the Presidential election this year or what is going to happen in the Senatorial elections, but it may be that there will be a Democratic President. It may be that the Democrats will control the Senate. I would not like to see the rapidly deteriorating situation which we now have now turn into a situation where there will be filibusters by the Republicans in the 111th Congress. For a long time the Democrats filibustered Fifth Circuit nominees, claiming Clinton's nominees were filibustered years back. Now we have a good many Fourth Circuit nominees who are not receiving hearings or votes. I am afraid we are going to have the same situation exacerbated with Republicans taking a position similar to the Democrats current position. It is my hope we will yet be able to do something about it.

Earlier today, Senator REID came to the floor and mentioned me by name. I gave Senator REID notice that I would be on the floor at 12:15 today, when I had some time allotted. I believe it is a good practice, not only a good practice, not only a preferable practice, but it ought to be the practice to let a Senator know if you are going to talk about him on the floor so he can come and reply, if he chooses to do so. But, Senator REID was commenting about the excessive amount of time Republicans wanted, an hour and a half. We had an hour equally divided a few weeks ago, and that left Republicans with a half an hour. Senator WARNER had a judge on the list and didn't have any time to speak. Senator BOND came to the floor, and there was no time for him on Republican time. I understood later—I found out this morning—that he got some time from Senator LEAHY.

But, all any Senator has to do is call. If Senator REID doesn't like the time request and wants it at an hour, he can call me. I realize he has a responsibility to administer this Chamber, and I am prepared to cooperate with him. But, it is my hope we will yet move ahead.

We have a large number of individuals who have been waiting a very long time in the confirmation process. Tomorrow marks the 750th day that Peter Keisler has waited for Committee action. Steve Matthews in the Fourth Circuit has been waiting 315 days for a hearing, and Judge Robert Conrad in the Fourth Circuit from North Carolina has been waiting for a year today.

One further comment before yielding to Senator GRASSLEY. There has been a lot of talk about the so-called Thurmond rule. The contention has been made that there is a rule, articulated by Senator Thurmond, which dictating that there are no judicial confirmations late in the final year of a Presidency, not after the summer. Allegedly, the concept was discussed at the Republican National Convention, where Senator Thurmond reportedly made a comment, although no quotation is directly attributable to Senator Thurmond, that they ought to wait until after the election to see who was elected before there were confirmations of other judges. But the facts are that no such practice was ever implemented. The facts are exactly to the contrary. It is true that on September 10, 1980, Senator Thurmond blocked 13 pending judicial nominations, but he gave his reasons why. He said: ''Our investigation has not been entirely completed on some of them.'' A week later, on September 17, Senator Thurmond withdrew the objections, and all 10 were confirmed on September 29. Then, the most conclusive evidence that there is no Thurmond rule was pertains to the situation with now-Supreme Court Justice Breyer. Justice Breyer was nominated by President Carter on November 13, 1980, after President-elect Reagan had been elected. So there was a vacancy that, had the Senate not confirmed him, would have awaited the next President. The nomination was acted upon very promptly, with the receipt by the Senate on November 13 and a hearing on November 17, even faster than the 1-week rule, which was waived. Breyer was reported out by committee on December 1 and confirmed by the full Senate on December 9. So how can you have a Thurmond rule if a circuit vacancy on the First Circuit is confirmed, even after a new President has been elected?

The evidence shows there are many confirmations late in the Presidential

term. I cite only a few. There was an additional circuit nominee confirmed in September of 1980. After September 1, 1984, 5 circuit court and 12 district court judges were confirmed. After September 1, 1988, five circuit court and nine district judges were confirmed. After September 1, 1992, three circuit court and nine district court judges were confirmed.

We have found, understandably, that arguments are made, depending upon what suits the purpose of the particular advocate. But, it is worth noting that Senator LEAHY said on May 4, 2000:

> There is a myth that judges are not traditionally confirmed in Presidential election years. That is not true. Similarly, Senator REID said, on March 7 of 2000:
>
> It is a myth that judges are not traditionally confirmed in Presidential election years. It is simply not true.

So, in the year 2000, when the Democrats sought to confirm President Clinton's nominees, reference was made to the fact that the Senate regularly confirms judicial nominations late in the term—the substance of the so-called Thurmond rule.

We ought to try to move, I suggest, away from positions where we articulate a view when it suits our purpose and then articulate a different view later. We ought to try to come to a point in this body where we understand reciprocity and understand that the rules ought to apply both ways. There is no Thurmond rule for Democrats when Republicans are in control and there is a Democratic President, and there is no Thurmond rule when the situation is reversed.

We have a similar situation, which is tearing at the heart of Senate procedures, where in modern times both Republican and Democratic leaders have adopted a process of taking procedural steps to prevent amendments from being offered. That practice has been engaged in by Senator Mitchell for the Democrats, Senator Lott and Senator Frist for the Republicans, and now, more by Senator REID for the Democrats.

Bills come to the floor, and the traditional right of a Senator to offer amendments is foreclosed by this procedural device, and the response is a filibuster. Senator REID then points to Senator MCCONNELL, saying that the filibuster is blocking Senate action. Senator MCCONNELL points to Senator REID saying that the filibuster is only in response to filling the tree.

These are just a couple of examples where positions are taken. And, it is understandable that they are taken to promote whatever objective Senators want at any particular time. But, I suggest the interests of the public and the procedures of the Senate would be much better served if we accepted principles and applied them to Democrats when it benefits Democrats and applied them to Republicans when it benefits Republicans. It is my hope, to repeat—which I do not like to do—that we are going to have to find a way out of this impasse, and we are going to find a way to restore some comity and to confirm judges in places where there are judicial emergencies and the public is suffering so that we do not repeat this cycle of recidivism and set the stage for the next Congress and the Congress after that to continue this nefarious practice which is harmful to the public.

Mr. President, I yield to my distinguished colleague.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I would like to ask if the Senator would yield?

Mr. SPECTER. I do yield.

Mr. GRASSLEY. Mr. President, I say to the Senator, he talked about judicial emergencies. I think it would be good if the public knew what a judicial emergency is and why it is so important that we emphasize getting those positions filled ahead of others and why there should be no excuse for holding them up, if you have any respect for the work of the judicial branch of Government.

Mr. SPECTER. I thank the distinguished Senator from Iowa for the question.

A judicial emergency has been defined by the Administrative Office of the Courts according to the backlog of cases and depending on the circumstances, as to how long litigants have had to wait. What it means in real world terms is, if somebody is injured, for example, in an automobile collision—a diversity case—and is out of work and has big medical expenses, that person's case does not come to trial and he does not get a decision as to what has happened. Or it may be a matter involving jobs in a community where there is an antitrust case, and it is delayed, both in the trial court and on appeal. But, every one of these judicial emergencies—and I put them in the RECORD before, but I ask unanimous consent to have them printed again at the conclusion of our discussion here—means that people are waiting to have their controversies decided, and they are undergoing very difficult circumstances being out of work, no salary, medical expenses, illustratively, while they wait for their case to come up.

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

(See exhibit 2.)

Mr. GRASSLEY. Mr. President, if the Senator will yield further—and I only remember two names, but I think these two names would permit me to ask a question that I think is legitimate and that the public ought to take into consideration as to the holding up of those nominations—I remember the Senator mentioned a Peter Keisler, who has been waiting for 750 days, and Robert Conrad, who also has been waiting for a long period of time, 365 days. Now, obviously, if these nominations are not being processed, there must be people who think these individuals are incompetent and should not be nominated. So what are the accusations of incompetency for these individuals not being approved?

Mr. SPECTER. Mr. President, responding to the question, there are no allegations of incompetency. Quite to the contrary. Nobody is saying that.

Mr. GRASSLEY. Well, if they are competent, shouldn't they be approved?

Mr. SPECTER. Yes, they should be. The reason they have not been approved is that there is an interest in holding open these vacancies in the event there is a President of the other party to fill them with the Democrats. Nobody is making any bones about that, I say to Senator GRASSLEY. That is the obvious and admitted reason.

Mr. GRASSLEY. So I draw the conclusion, I say to the Senator from Pennsylvania, that the people blocking these nominations really are not concerned at all about the efficient operation of the judicial branch of Government. But we should get our job done and confirm these nominees because that is what it takes for the judicial branch to get their work done. The judiciary needs to have the personnel to get their job done.

Mr. SPECTER. Mr. President, I respond by saying to the Senator from Iowa that is a very harsh accusation, very harsh accusation he has just made. But, since he has made it, I will say that it is true.

Mr. GRASSLEY. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I see the distinguished ranking member of the Judiciary Committee is here and has been so experienced in these matters and been through the wars and battles over nominations for some time. And we have had a good bit of that, but we have also, in the end, had a pretty decent understanding of the responsibilities the committee has to honor the President's nominations and give them an up-or-down vote and not just shut down the process.

I guess my question would be, I say to Senator SPECTER, Senator LEAHY's statement at the Judiciary June 12 executive business meeting—he announced he was invoking the so-called Thurmond Rule, and he said: ''We are now way past the time of a Thurmond rule named after Senator Thurmond when he was in the minority, and I'm trying to respect that. We are still putting judges through. But I must note this point; further judges will be moved only by a consent of the two leaders of the Senate and the two leaders of this committee,'' which, of course, says fundamentally that unless Senator LEAHY and Senator REID approve of a nominee, from this point on, it is not moving forward.

I know you conducted an open hearing and discussion of that. I ask the Senator basically how he feels about the definition of the ''Thurmond Rule'' and what it really means and whether

we are doing something that is unprecedented here.

Mr. SPECTER. Mr. President, I thank the Senator from Alabama for the question. There was a Republican forum on Monday of this week to examine the Thurmond Rule. I had notified Chairman LEAHY of it and had written to him about it, and I ask unanimous consent to have that letter printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, July 8, 2008.*

Hon. PATRICK J. LEAHY,
*Chairman, Senate Committee on the Judiciary, Washington, DC.*

DEAR PAT: Following up on our telephone conversation late yesterday afternoon in which I advised that I would raise no technical objection to the Thursday hearing, I am amplifying my comments about the forum which the Senate Republican Conference has scheduled for next Monday, July 14th, at 2:00 P.M. in SR–385.

That Republican forum, one in a series, will deal with the issue of the so-called Thurmond Rule. As I mentioned to you on the phone yesterday, it seems to me that is one which could benefit from participation by Democratic members of the Judiciary Committee if there is any interest on your part in doing so.

Obviously, there is a fuller development of any issue when there are pros and cons; and, not unexpectedly, the Republican view is there is no rule, Thurmond or otherwise, to preclude confirmation of judges this year.

Distinguished experts have been invited as follows: Professor John McGinnis, Northwestern Law School; Mr. Roscoe Howard, former U.S. Attorney, District of Columbia; David Bohm, Assistant Executive Director of the North Carolina Bar Association; Mr. Steve Rutkus, Congressional Research Service.

If there is any interest on your side of the aisle or if you would like to add an additional witness (witnesses), we would be pleased to try to accommodate.

My best.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. During the course of that forum, to answer the question directly from the Senator from Alabama, we had an expert from the Congressional Research Service—the nonpartisan body—come in to trace the origins of the so-called Thurmond rule. He stated that it arose back in the Republican Convention in 1980, when Senator Thurmond raised the possibility of holding up confirmations until after the election, but it was never done.

The facts are that there were 10 district court judges confirmed in September of 1980, and now-Justice Breyer was nominated to the First Circuit by President Carter after the election, on November 13, and was confirmed in December 1980. Another circuit judge was confirmed after September of 1980.

I put in the RECORD earlier a litany of district and circuit judges confirmed after September in the last year of a Presidential term. I also put into the RECORD statements which had been made by Senator REID and Senator LEAHY that there was no practice, no rule of not confirming judges at the last part of a President's term, say after Labor Day.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wonder if my colleague would yield for a question.

I would like to ask our distinguished ranking member of the committee, aren't there several well-qualified judicial nominees currently pending in the Judiciary Committee who have been denied fair up-and-down votes? For example, Mr. Peter Keisler, the former Acting Attorney General, has been rated unanimously ''well qualified'' by the American Bar Association and has earned bipartisan praise from attorneys, professors, and even editorial pages. I know the Washington Post and the L.A. Times have praised his nomination, calling him a ''moderate conservative'' and a ''highly qualified nominee'' who ''certainly warrants confirmation.'' Notwithstanding those outstanding qualifications, tomorrow, I believe, will mark 750 days that Mr. Keisler has been waiting for a committee vote.

Mr. SPECTER. Mr. President, responding to the question, the Senator from Arizona is correct. Peter Keisler has been praised in all quarters for his capabilities. He served as Assistant Attorney General and as Acting Attorney General. He has drawn editorial praise and is extremely well qualified, both academically and professionally, and is simply being held up because at one time in the past there was a Republican concern about the need for additional judges on the Circuit Court for the District of Columbia. And, that issue has since been satisfied.

Mr. KYL. Mr. President, might I inquire of my colleague further on that precise point?

With regard to the filling of the circuit court for the District of Columbia, we had testimony by Mr. Roscoe Howard, very recently in the Senate Republican caucus forum on judicial confirmations—this was just last Monday—that the numbers the majority relies on for that argument that the Senator identified are outdated. He noted that the Judicial Conference recently issued statistics indicating that in recent years the DC Circuit Court's docket has increased and that it has been processing appeals more slowly because of additional workload, and this has corresponded with an increase in the median wait time between the notice of appeal and disposition of a case, which, in fact, he notes is the longest since 1995.

Mr. SPECTER. Mr. President, the Senator from Arizona is correct. The current statistics show a need for another judge there, and there is no reason to withhold the confirmation of Peter Keisler, except to keep a vacancy open with the hope of having the new President of the other party fill it.

Mr. KYL. Mr. President, just one more point.

I also note, when I heard Mr. Howard's testimony demonstrating further the need to fill this seat, he noted that Judge Raymond Randolph of the DC Circuit recently announced he would be taking senior status on November 1 of this year, which means the seat to which Mr. Keisler is nominated is actually the 10th seat on that circuit. Is that not correct?

Mr. SPECTER. The Senator from Arizona is correct again.

Mr. KYL. Mr. President, again I say to Senator SPECTER, just to confirm my understanding here, in addition to Judge Randolph, Judge David Sentelle currently is eligible for senior status. Next year, Judge David Tatel and Judge Judith Ann Rogers will be eligible for senior status. Judge Karen Henderson and Judge Douglas Ginsburg will be eligible in 2009 and 2011, respectively. Am I correct on that?

Mr. SPECTER. Mr. President, the Senator from Arizona is correct, yes.

EXHIBIT 2

CURRENT JUDICIAL EMERGENCIES WITH NOMINEES

| Nominee | ABA | Date vacant | Nomination date | Senate action | Pending |
|---|---|---|---|---|---|
| William E. Smith (1st Circuit) | Substantial Majority Well Qualified/Minority Qualified | 12/31/06 | 12/06/07 | No Action | 224 days |
| Shalom Stone (3rd Circuit) | Substantial Majority Qualified/Minority Well Qualified | 1/31/06 | 7/17/07 | No Action | 365 days |
| Gene Pratter (3rd Circuit) | Unanimous Well Qualified | 10/23/06 | 11/15/07 | No Action | 245 days |
| Robert Conrad Jr. (4th Circuit) | Unanimous Well Qualified | 7/31/94 | 7/17/07 | No Action | 365 days |
| Rod Rosenstein (4th Circuit) | Unanimous Well Qualified | 8/31/00 | 11/15/07 | No Action | 245 days |
| Thomas Farr (E.D. N.C.) | Unanimous Well Qualified | 12/31/05 | 12/07/06 | No Action | 588 days |
| James Edward Rogan (C.D. C.A.) | Substantial Majority Well Qualified/Minority Qualified | 5/22/06 | 1/9/07 | No Action | 555 days |
| David R. Dugas (M.D. L.A.) | Unanimous Well Qualified | 1/15/07 | 1/15/07 | No Action | 549 days |

Mr. KYL. Mr. President, it seems to me, given these facts, it is even more imperative that Peter Keisler be at least voted on, and I would argue confirmed, to the DC Circuit, and it seems to me no other reasons than purely political motivations seem to be blocking his confirmation.

Mr. GRASSLEY. Mr. President, I ask Senator KYL, aren't there a lot of other well-qualified nominees being blocked as well?

Mr. KYL. Mr. President, the answer to my colleague from Iowa is yes. Mr. Steve Matthews of South Carolina and

Judge Robert Conrad of North Carolina, for example, are both impressive nominees who are exactly the kind of judges the severely understaffed Fourth Circuit Court of Appeals needs.

Mr. GRASSLEY. How close are they to being confirmed?

Mr. KYL. That is a very good question. Judge Conrad has been waiting for a hearing for 365 days. Today is the 1-year anniversary of his nomination, even though he was unanimously rated ''well qualified'' by the American Bar Association, and Mr. Matthews has been waiting for a hearing for 315 days.

Mr. GRASSLEY. I ask Senator KYL, didn't Chairman LEAHY and the other Democratic members of the Judiciary Committee say that a unanimous ''well qualified'' rating by the American Bar Association is somewhat of a ''gold standard'' by which all nominees should be judged?

Mr. KYL. Yes. I guess I would say that was then, this is now. But in addition to the ABA rating, I note that Judge Conrad in particular meets the other three criteria that Chairman LEAHY has stated are his standards for quick confirmation.

Mr. GRASSLEY. Of course. Isn't he nominated to fill a seat deemed ''a judicial emergency'' by the nonpartisan Administrative Office of the Courts?

Mr. KYL. The answer is yes. Chairman LEAHY has said—and I think all of us would agree—that judicial emergencies should be addressed quickly. In fact, in a press release in January of last year, he stated:

> There are several outstanding judicial emergencies. . . . I hope to expeditiously address some of these emergency vacancies in the Judiciary Committee.

Mr. GRASSLEY. Yes. We have always had an understanding around here that if both Senators of the home State supported a nominee, they would move forward. Doesn't Judge Conrad satisfy this third prong of the ''Leahy standard'' for confirming judges since he has the strong support of both his home State Senators?

Mr. KYL. Yes. Both Judge Matthews and Judge Conrad have the support of their home State Senators. In fact, on October 2 of last year, Senators BURR and DOLE sent a letter to Senator LEAHY asking for a hearing for Judge Conrad, and they spoke on his behalf at a press conference on June 19 that featured numerous friends and colleagues of Judge Conrad's who had traveled all the way up from North Carolina to DC to offer their support for his nomination. On April 15, 2008, Senators BURR, DOLE, GRAHAM, and DEMINT sent a letter to Senator LEAHY asking for a hearing for Judge Conrad and for Mr. Matthews.

Mr. GRASSLEY. I believe it is also true, that Judge Conrad meets the fourth and final prong of Chairman LEAHY's standard because he previously received bipartisan approval by the Judiciary Committee and the Senate when he was confirmed by a noncontroversial voice vote to be a U.S. Attorney in North Carolina and when he was confirmed by voice vote to the District Court for the Western District of North Carolina. It seems to me that these bipartisan voice votes indicate that Judge Conrad is a noncontroversial consensus nominee.

Mr. KYL. I absolutely agree with that assessment. Those are the considerations that underscore my great regret that no nominees were on the agenda for the executive business meeting of the Judiciary Committee this morning.

Mr. SESSIONS. Mr. President, to my colleague from Iowa, I asked earlier of Senator SPECTER regarding his statement that Chairman LEAHY was saying he was going to enforce a Thurmond rule and that nobody would be moved henceforth—no nominee—unless both he and the ranking member and the majority leader and the Republican leader each approved. So I ask Senator GRASSLEY how he feels about that statement.

Mr. GRASSLEY. Well, I have had a chance to review that, and I can say that as you know, in May of 2000, during President Clinton's last year in office, Senator LEAHY, referring to the Thurmond rule, said:

> There is a myth that judges are not traditionally confirmed in presidential election years. That is not true. Recall that 64 judges were confirmed in 1980, 44 in 1984, 42 in 1988 when a Democratic majority in the Senate confirmed Reagan nominees and, as I have noted, 66 in 1992 when a Democratic majority in the Senate confirmed 66 Bush nominees.

That is the end of the Leahy quote in regard to the Thurmond rule.

Mr. SESSIONS. I think the Senator is correct. He has been a long-time senior member of the Judiciary Committee who is active in that entire process. In fact, Senator REID, now the majority leader, made a similar statement in March of 2000 and those statements are more accurate descriptions of the history of the Thurmond rule over the past 25 years.

Isn't it also true that the majority asserts the purported Thurmond rule originated in the summer of 1980 when Senator Thurmond was the ranking member of the Judiciary Committee?

Mr. GRASSLEY. Well, the answer is yes, of course. Let me explain that Senate Democrats allege that Republicans, then in the minority and anticipating a change in power in the 1980 election, stalled the approval of President Carter's judicial nominees. The Majority points to a discussion at an executive business meeting which took place on September 10, 1980, when Ranking Member Thurmond asked Chairman KENNEDY to hold over 13 nominees for 1 week because their background investigations were not complete. However, this allegation is not accurate.

Mr. SESSIONS. Well, is it not true, Senator GRASSLEY, based on your experience, that it is standard procedure to hold nominees over until their background checks have been completed?

Mr. GRASSLEY. Yes, it is. In fact, a 1-week holdover in the Judiciary Committee is any Senator's prerogative—in fact, prerogatives I have used a few times myself—and over the last 2 years, the Majority has held over virtually all of President Bush's nominees for 1 week before a committee vote. Do you recall whether the Senate later confirmed any of these nominees who were held over?

Mr. SESSIONS. Well, I think that is, in fact, true. The Senate confirmed 10 of the 13 nominees, and Senator Thurmond stated at an executive business meeting that the committee did not report favorably on the other three because: ''The minority had some questions of substance that would have to be discussed.''

The committee did not hold another executive business meeting that year, so the other three nominees were not considered again.

Mr. GRASSLEY. I think it is pretty clear then, Senator SESSIONS, referring to the accusations made about Senator Thurmond, it doesn't sound to me as though Senator Thurmond was blocking nominees in anticipation of an upcoming election.

Mr. SESSIONS. No, it doesn't. In fact, the record shows that on September 29, 1980, in a floor statement, Senator DeConcini, a Democratic member of the committee, commended Senator Thurmond for:

> demonstrating leadership on the Committee on the Judiciary, a willingness to take case-by-case appointments, obviously from a different administration than he might prefer, but willing to proceed with the advancement of these appointments, because the need of the judiciary does come before party preference.

Mr. GRASSLEY. Let me also point to a nonpartisan source. Didn't Mr. Steve Rutkus from the Congressional Research Service testify at the Senate Republican Conference's forum on the judicial nomination process on Monday that the facts do not support a Thurmond rule? Would that be correct? Is that the way you understand it?

Mr. SESSIONS. That is what he said. In addition, between June 1 and September 1 of 1980, President Carter's last year in office, didn't the Senate confirm four circuit court nominees and 15 district court nominees?

Mr. GRASSLEY. Yes. The record shows the Senate did. That is entirely true.

Mr. SESSIONS. In fact, wasn't one of those circuit nominees ACLU general counsel—the American Civil Liberties Union general counsel, Ruth Bader Ginsburg, who was later confirmed to the DC Circuit on June 18, 1980?

Mr. GRASSLEY. Yes. It doesn't sound to me like the conservative Senator from South Carolina was using any power he had on the Judiciary Committee to hold up a person who has turned out to be very much a judicial activist. I would say even more remarkable, in regard to your statement, after September 1, 1980, the Senate confirmed 11 district court nominees and 2

additional circuit court nominees, including Stephen Reinhardt, who has gone on to earn a reputation as one of the Nation's most liberal jurists. The other post-September circuit court confirmation was that of Stephen Breyer, who at that time was Senator KENNEDY's chief counsel on the Judiciary Committee.

Mr. SESSIONS. Well, Senator GRASSLEY, I know, is aware of that, but wasn't Mr. Breyer nominated by President Carter on November 13, 1980, after President Carter had lost the election to President Ronald Reagan? And didn't the Senate Democrats, who had just lost control of the Senate, hold a swift confirmation vote on Breyer during that lame duck session on December 9, 1980?

Mr. GRASSLEY. That is right. In fact, the Senate confirmed a total of 10 circuit court nominees and 53 district court nominees during 1980, President Carter's last year in office. And 1980 was not an aberration. As Senator LEAHY noted in 2000, the pattern continued in subsequent election years. Also in 2000, the year Senator LEAHY called the Thurmond rule a ''myth'' when he was complaining about the pace of judicial confirmations, the Senate confirmed 8 circuit court nominees and 31 district court nominees.

Mr. SESSIONS. I thank my colleague from Iowa. He has been a stalwart, capable member of this committee for many years. He is known for plain speaking and honest talk. I think that is what we have had here. It is a shame we are looking at an unprecedented circumstance. I note we are put in a position where I think it is difficult to respond, other than to go to the American people, because what Senator LEAHY has done is state that the Thurmond rule is something that it is not and indicate that further judges will be moved only by consent of the two leaders of the Senate and the two leaders of the committee.

He made that statement very recently. So it looks as though we are at a point where the normal procedures of moving judges have been abrogated and that it is unlikely additional nominees will be confirmed.

I have a few more comments, but my senior colleague Senator GRASSLEY is here, and I am glad to yield the floor.

Mr. GRASSLEY. No. Go ahead.

Mr. SESSIONS. I thank the Senator. I wish to talk a little bit about Robert Conrad. I was a U.S. Attorney, Federal prosecutor for 12 years, and an assistant U.S. attorney for 2½ years. It was a great job, a wonderful opportunity to serve the public.

I remember not too long after I came here, President Clinton was embroiled in quite a number of scandals and allegations were made. Janet Reno was then the Attorney General of the United States, and she decided to appoint a counsel to conduct an investigation of allegations against President Clinton, as I recall. I don't remember what the substance of the complaints were at that time. There were a lot of them on different things. She looked all over the United States of America to pick a top prosecutor, somebody who had credibility, and judgment she could trust to undertake this difficult thing that the entire Nation was watching, and do you know who she selected? She selected Mr. Conrad of North Carolina. He was then an assistant U.S. attorney and he undertook this challenge.

He investigated at some length, and all I recall about it was that he did not choose to indict anyone. I remember he testified before our committee and he was such a straight shooter. He was so mature in his responses to the questions. He was a relatively young person, but an experienced attorney in the Department of Justice. He did a good job. He was asked a lot of tough questions because people were concerned about those issues. He handled them well. So I have a vivid memory of that. Janet Reno said her respect for him continued to grow throughout his service in that capacity, in that most difficult challenge that she asked him to undertake. Later, he was confirmed to be a Federal judge in North Carolina and has served there and has moved up.

Now he is the chief presiding district judge in the State of North Carolina. President Bush, of a different party than Janet Reno, chose him and nominated him to be a judge on the Court of Appeals, one step below the U.S. Supreme Court, an important and prestigious position, and that went forward. Now, 365 days have gone by and he has not even had a hearing.

Let me interject and say those of us on the conservative side have felt many times that the American Bar Association tends to favor liberal judges, but I value its opinion.

I always have. I think it is an important opinion because they talk to lawyers throughout the community and judges throughout the community. There are about 15 members on this committee. Then the judges come together and review all of the reports and interviews from the most prominent lawyers in the community, fellow judges, and State judges. They say: What kind of person is he? Does he have good judgment? Has he handled his docket well? Is he a man of integrity and ability? Does he understand complex rules of law?

Those are the kinds of things they talk about. They do an evaluation. Most nominees are not rated ''well qualified,'' and usually there is a good bit of dispute within the communities about what kinds of recommendations should occur. That committee met and discussed it, and they unanimously rated him ''well qualified,'' which is the highest rating the American Bar Association can give to a nominee for judicial office. He served ably as an assistant U.S. attorney. He handled one of the most important cases in the entire Nation as an assistant U.S. attorney. The Democratic Attorney General looked over the entire United States and reached out and picked him to handle a case involving the President of the United States of America, and she had nothing but high compliments for his performance. The ABA has evaluated him. He was confirmed previously as a district judge, became the presiding district judge for that area, and has now been nominated to be a Federal circuit judge. He has been denied even a hearing, even though he got a unanimous ''well qualified.''

A lot of people think this is just politics. But I hope the American people understand that it is not just politics. This Nation has as its bedrock foundation for our prosperity and our liberty a belief in the rule of law. It is something we inherited even before we became a nation. Those of us on this side believe a Federal judge should not be an activist. A Federal judge should not be attempting to carry out some personal agenda. A Federal judge should be a neutral umpire to decide cases in a neutral and fair way. The policy decisions should be made by the State legislatures or the Federal Congress or the President of the United States.

I feel as though we need to understand that there is a clear difference between the kind of judges our Democratic colleagues tend to favor for the bench and those President Bush has been nominating. They think Judge Conrad is not activist enough. They think he won't promote their agenda, which they are not oftentimes able to win with at the ballot box. His nomination has been blocked. I don't appreciate that. He is a fabulous nominee who is highly respected by Democratic Members. We had a wonderful hearing where a whole roomful of people came from North Carolina to testify on his behalf, to plead with the Senate to give this man an up-or-down vote. No, they invoke the Thurmond rule—and that is not an accurate invocation of the Thurmond rule—as an excuse to block him.

There are already four vacancies on the Fourth Circuit, including from Virginia, down to the Carolinas. He is one of them.

I think the man deserves an up-or-down vote. He deserves to be confirmed. We will not have better nominees than Judge Conrad. He has proven himself on the bench and as a Federal prosecutor, both times in Federal court, where he will now be called upon to serve.

I have to tell you, I will add one more thing on why I think he is special. Judge Conrad was a point guard on the Clemson University basketball team in the Atlantic Coast Conference. You have to make decisions in that job. He was an outstanding academic All-American. I think the man is fabulous, and he ought to be confirmed. I am upset that he has not been.

I say the same for Mr. Matthews, also nominated to fill one of those four vacancies on the Fourth Circuit, and Mr. Keisler, who was rated unanimously

''well qualified'' for the DC Circuit. They have been waiting hundreds of days, and it is not right. They ought to be confirmed.

I thank the chair and yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I rise to discuss an issue that is important to my constituency—the confirmation of qualified judicial nominees. I thank the Senator from Alabama for his explanation of what is happening in his area. I want to speak a little bit on what is happening in my area.

I have heard the majority leader say that when he hears from constituents, it is about energy, housing, and other issues; but he never hears about judges. I can tell you my experience is different. Yes, constituents talk about energy and health care and housing and about the economy, but they also bring up the need to confirm qualified judicial nominees.

I am specifically before the Senate to ask my colleagues to consider confirming a qualified candidate for my home State of Wyoming. The nominee is Richard Honaker. Despite the fact that he was rated unanimously ''well qualified'' by the American Bar Association, and despite the fact that he has strong bipartisan support in Wyoming, he has been pending before the Senate Judiciary Committee for 486 days. That is just the committee. He isn't even to the floor yet—486 days in committee. It seems as though they could at least do an up-or-down vote and get that decided instead of just keeping him in limbo.

Why has Mr. Honaker's nomination been pending so long? He meets all of the tests that have been laid out for qualified judicial nominees. As I mentioned, the ABA has given Mr. Honaker its highest rating of unanimously ''well qualified.'' He has the support of both home State Senators. My colleague will be speaking to this shortly as well. In fact, he not only has the support of myself and Senator BARRASSO, his name was submitted to the White House for consideration by my friend, the late Senator Craig Thomas. Senator Thomas submitted Mr. Honaker's name after it was recommended to him by a panel Wyoming lawyers who evaluated about fifty individuals who were interested in serving on the Federal bench. Richard was the unquestionable choice of those attorneys. This wasn't the unquestionable choice of Senator Thomas; it was the unquestionable choice of a panel of attorneys who chose him from a whole range of people who were interested.

My recollection is that this is the first time that a Republican Senator has ever nominated a trial lawyer for a judgeship from Wyoming.

Mr. Honaker doesn't only have the support of Republicans, his nomination is supported by former Wyoming Democratic Governor Mike Sullivan, who also worked as the Ambassador to Ireland for President Bill Clinton. He is an attorney operating in Wyoming. Mr. Honaker is supported by Robert Schuster, another attorney, a former committeeman of the Democratic National Committee, who was a Democratic nominee for the House of Representatives. He has the support of Lee Reese, the President of the International Association of Fire Fighters Local 1499.

With all that in mind, you would think Mr. Honaker would be confirmed quickly. But, no, his nomination has been pending before the Judiciary Committee for more than a year because of an action he took more than 20 years ago as a Democratic State legislator. Acting as a State legislator on behalf of his constituents who are generally pro-life, Mr. Honaker drafted a bill called the Human Life Protection Act. The bill failed in committee and didn't move forward.

Mr. Honaker has had no involvement in the abortion issue for more than 20 years. Yet that is being used as a litmus test. Some liberal groups are claiming he is an extremist and saying he would come to the bench to overturn Roe v. Wade. They obviously don't know him because, if they did, they would understand that Mr. Honaker knows the difference between acting as a legislator and acting as a jurist. He knows there is a difference. He gave sworn testimony before the Senate Judiciary Committee on February 12, 2008, saying that he would uphold the precedent of Roe v. Wade.

Yet even with that information, he is being blocked from a vote in the Judiciary Committee. It is even more ironic that he is being held up because of legislation he introduced because the pro-choice legislators who blocked the bill he sponsored in the Wyoming Legislature support his nomination to the Federal bench.

We are in a dangerous place when it comes to confirmation of Federal judges in the Senate. With Mr. Honaker's nomination, my colleagues are saying that we do have a litmus test for judges: If you have ever been involved in the abortion issue, you cannot be confirmed as a judge, regardless of how you were involved, and regardless of your qualifications. I know this is the case with Mr. Honaker's nomination because, if my colleagues looked at the other legislation he sponsored in the Wyoming State Legislature, they would see that much of it is more favorable to their policies than the policies of the Republicans.

Mr. Honaker is well qualified to be a Federal judge, as evidenced by the strong support he has from a diverse group of people in Wyoming. He deserves to be confirmed. I hope my colleagues will look beyond one bill he introduced as a legislator 20 years ago and give his nomination the consideration it deserves.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from Wyoming is recognized.

Mr. BARRASSO. Mr. President, I am here today to ask the Judiciary Committee to hold a simple vote—hold a vote on the nomination of Richard Honaker, to be a U.S. District Judge for the District of Wyoming.

Mr. Honaker was recommended to President Bush by Senators Thomas and ENZI on January 10, 2007.

The recommendation occurred following an extensive vetting process in Wyoming by a committee that was formed by Senator Thomas. This committee consisted of a diverse group of attorneys from across the State. They reviewed and they vetted all of the applicants.

Nearly four dozen attorneys from around the State of Wyoming expressed an interest in this position. Mr. Honaker was selected from a very competitive and highly qualified pool of Wyoming attorneys. President Bush agreed with the recommendation, and he sent Mr. Honaker's name and nomination to the Senate March 19, 2007—over a year ago.

Senators Thomas and ENZI and I all notified the committee over time that the home State Senators support this nomination.

Well, the nomination languished in the Senate Judiciary Committee until February 12 of this year. That is when a nomination hearing was finally held. Four nominees were considered that day. Mr. Honaker was the only nominee at the hearing that received the ''gold star'' seal of approval by the American Bar Association, and that is a unanimous ''well qualified'' rating.

The American Bar Association interviewed more than 50 Wyoming attorneys and judges to come to the conclusion that Mr. Honaker is well qualified to serve on the bench.

Despite this unanimous support of the home State Senators and the American Bar Association, Mr. Honaker continues to be denied a vote in the Judiciary Committee.

To put Mr. Honaker's situation into context, two of the other nominees who appeared at that February 12 hearing received a committee vote and were approved by the Senate back in April.

Mr. Honaker is an outstanding attorney. He is widely regarded by his peers. It is evidenced by the fact that he is the first attorney in the history of Wyoming, in our 118 years of statehood, to serve Wyoming both as president of the Wyoming State Bar Association and the Wyoming Trial Lawyers Association. He has earned the respect of the legal community.

As I mentioned, the Standing Committee on the Federal Judiciary of the American Bar Association unanimously—unanimously—voted that Mr. Honaker is well qualified. His 30-plus years of legal work is exemplary. There is no question at all that he is ready to fill the seat for which he has been nominated.

I know Mr. Honaker. I respect him as an individual. I admire his legal abilities and his passion and his love of the

law. That respect is shared by many of Wyoming's finest legal minds. Words I have heard from members of the Wyoming bar to describe Mr. Honaker: bright, fair, civil, ethical, passionate about his clients, and devoted to the law. He expects the same of others that he requires of himself: be well prepared, observe the rules of courtroom procedure and decorum, treat every person in the courtroom—whether lawyer, litigant, witness, or juror—treat every person in the courtroom with the greatest measure of courtesy and respect.

There is no more qualified person to serve on the Federal bench in the District of Wyoming than Richard Honaker. You don't have to take my word for it. Ask the attorneys of Wyoming or of the American Bar Association. This outstanding nominee deserves the courtesy of a vote in the committee and consideration by the full Senate. That courtesy is long overdue.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SALAZAR). Without objection, it is so ordered.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

## HEALTH CARE

Mr. WYDEN. Mr. President, this morning there was some remarkable testimony given by Dr. Peter Orszag, the head of the Congressional Budget Office, which, in my view, is going to set the bar for how this Congress contains skyrocketing health care costs. Dr. Orszag has zeroed in on the question of health care costs, as my friend from Colorado knows, saying that escalating health care costs are essentially the premier determiner of this country's fiscal condition. So when Dr. Orszag, in effect, lays out what it is going to take for America and the Congress to contain medical costs, it seems to me that is a real wake-up call for this body and for the country.

What Dr. Orszag did is to spell out the extent of the inefficiencies in American health care. We are going to spend this year about $2.3 trillion on medical care. Dr. Orszag has said that the system is now so riddled with inefficiency that perhaps $700 billion of that $2.3 trillion is going to be spent on care and services that is of relatively little value as it does not contribute toward improved health outcomes.

Given this enormous economic challenge for our country—and, in effect, economic insecurity to a great extent is determined by rising health costs and rising gasoline prices—I wanted to get to the bottom of what the Congressional Budget Office thinks is going to be necessary to contain medical costs. So what I asked Dr. Orszag, specifically, was about his sense of what it will take to bend the health cost curve downward. Dr. Orszag said, in response to my questions, that it is going to take two things:

First, it is going to be essential to demonstrate to our people very directly how much these inefficiencies cost them, for example, in their reduced take-home pay at work. Second, Dr. Orszag made it very clear that to contain cost and to wring out these inefficiencies, it is going to be necessary for the Congress to pass health reform legislation so that in a more efficient, more fair health care system our people will have a new financial incentive to select health care carefully.

The reason I say Dr. Orszag set the bar today for containing health costs is because it is clear there are a lot of ideas for how to go about this task. I know the Senator from Colorado is very interested in health information technology, for example—virtually all Senators are—and all those new approaches are going to be very important. But I asked Dr. Orszag was it the only way that you could contain costs, to take those two steps—one to make sure people see directly what they lose if we continue a system with all these inefficiencies; and, second, what happens if there are no new financial incentives—and Dr. Orszag said very specifically that to contain medical costs you need to take those two steps: demonstrate to people what they are losing and give them new incentives to hold down costs.

Now, I have been honored to be able to join with 16 Members of this body, 8 Democrats and 8 Republicans, around legislation that is built on the two principles that Dr. Orszag affirmed today are going to be essential to contain health care costs. We make sure everybody understands what the implications are for propping up all these inefficiencies in their wages, because for the first few years under our legislation we would stipulate that workers are entitled to the cash value of what their employer is now spending on health care. So with that requirement, we address what Dr. Orszag has said is essential—to demonstrate to workers what they lose out on with the status quo.

The second thing we do in our legislation, which tracks Dr. Orszag's plan to contain costs, is we make sure that in a new system—where insurers have to take all comers, where people are part of a large group so that they have bargaining power, where there are lower administrative costs because you use the tax system to sign up people, and there is uniform billing—we also give a cash reward to individuals for making more careful purchases of their health care.

For example: Under our legislation, if their employer has spent $15,000 on their particular health care, and the individual worker either chooses an employer's package or, say, another package, and the package they chose would cost $14,200, that individual worker has $800 in their pocket to go on a great fishing trip in Oregon or Colorado, where we have some of the best recreation in the country.

So in our legislation, by way of giving a reward to workers, a cash reward for a careful selection of their health care, we do what Dr. Orszag has recommended as the second approach for containing medical costs.

I made clear this morning—and I especially appreciate Chairman BAUCUS's leadership because these hearings are a follow-up to our Finance Committee summit—and Chairman BAUCUS has made it clear we are going to work in a bipartisan way. He and Senator GRASSLEY, in my view, are sort of the example of how to work in a bipartisan fashion. I said this morning I think there are probably other approaches that ought to be examined in this whole discussion, but what we do know from this morning is that Dr. Orszag has said you have to have those two essentials to contain costs—workers understanding what they lose out of the current system and new financial incentives for making careful purchases.

That is why it seems to me that what Dr. Orszag did today was to set the bar; to, in effect, lay out a vision of what it is going to take to hold down medical costs. It seems to me, when we look at the double whammy our people are facing today—the combination of skyrocketing medical bills and getting clobbered at the gasoline pump—we see that those are the two areas where you need to take action.

Under the leadership of the Majority Leader, Senator REID, we are going to go after those gas price hikes before the Congress breaks for the recess. I am pleased to be part of our caucus's efforts to work on this and pleased that we are reaching out across the aisle so, hopefully, there will be bipartisan support for our efforts to hold down gasoline price hikes. But I think we need to start laying out, as Dr. Orszag did today, the strategy for holding down medical costs.

I have been very fortunate to be able to work with Senator BENNETT, the Senator from Utah, as part of a group of 16 Senators—8 Democrats and 8 Republicans—in what is the first bipartisan effort in the history of the Senate. This is the first time where there has been a significant coalition, a bipartisan coalition, working for universal coverage. Today, what Dr. Orszag did was to affirm the guts of what we have been advocating for. He affirmed it specifically, that this was a way to achieve the cost containment in our health care system that is so essential. There may be other ways, but this is one way to do it. We now have an opportunity over the next few months, as