

this year threatening to filibuster every judicial nominee of the new President. They have followed through by dragging out, delaying, obstructing and stalling the process. The result is that 10 months into President's Obama's first term, the Senate has confirmed only three of his nominations for circuit and district courts while judicial vacancies skyrocket around the country. The delays in considering judicial nominations pose a serious problem in light of the alarming spike in judicial vacancies on our Federal courts.

There are now 96 vacancies on Federal circuit and district courts and another 24 future vacancies already announced. These vacancies are at near record levels. Justice should not be delayed or denied to any American because of overburdened courts. We can do better. The American people deserve better.

Professor Tobias' observations about the Second Circuit hold true throughout the country and with respect to this President's efforts to work cooperatively with respect to judicial nominations. President Obama made his first judicial nomination, that of Judge David Hamilton to the Seventh Circuit, in March, but it has been stalled on the Executive calendar since early June, despite the support of the senior Republican in the Senate, Senator LUGAR. The nomination of Judge Andre Davis to the Fourth Circuit was reported by the committee on June 4 by a vote of 16 to 3, but has yet to be considered by the Senate. The nomination of Judge Beverly Baldwin Martin to the Eleventh Circuit has the support of both of Georgia's Senators, both Republicans, and was reported unanimously from the committee by voice vote on September 10 but has yet to be considered or scheduled for consideration by the Senate. The nomination of Joseph Greenaway to the Third Circuit has the support of both Pennsylvania Senators, and was reported unanimously from the committee by voice vote on October 1, but has yet to be considered or scheduled for consideration by the Senate. All of these nominees are well-respected judges. All will be confirmed, I believe, if only Republicans would consent to their consideration by the Senate. Instead, the President's good efforts are being snubbed and these nominees stalled for no good purpose.

President Obama has been criticized by some for being too solicitous of Senate Republicans. As Wade Henderson, the executive director of the Leadership Conference on Civil Rights, said to *The Washington Post* recently: "I commend the President's effort to change the tone in Washington. I recognize that he is extending an olive branch to Republicans on the Judiciary Committee and in the Senate overall. But so far, his efforts at reconciliation have been met with partisan hostility." As usual, Wade has it right. The efforts the President has made have not been reciprocated.

The Senate can and must do a better job of restoring our tradition of regularly considering qualified, non-controversial nominees to fill vacancies on the Federal bench without needless and harmful delays. This is a tradition followed with Republican Presidents and Democratic Presidents. We should not have to overcome filibusters and spend months seeking time agreements to consider consensus nominees.

In addition, four nominations to be Assistant Attorneys General at the Department of Justice remain on the Executive calendar, three of them for many months. Republican Senators have also prevented us from moving to consider the nomination of respected Federal Judge William Sessions of Vermont to be Chairman of the United States Sentencing Commission for over 5 months, even though he was twice confirmed as a member of that Commission. The majority leader has been forced to file a cloture motion in order to end the obstruction of that nomination.

Four out of a total of 11 divisions at the Department of Justice remain without Senate-confirmed Presidential nominees because of Republican holds and delays—the Office of Legal Counsel, the Tax Division, the Office of Legal Policy, and the Environment and Natural Resources Division. Earlier this month, with the hard work of Senator CARDIN, we were finally able to move forward to confirm Tom Perez to head the Civil Rights Division at the Justice Department. His nomination was stalled for 4 months, despite the fact that he was approved 17 to 2 by the Judiciary Committee. At the last minute, Senate Republicans abandoned an ill-fated effort to filibuster the nomination and asked that the cloture vote be vitiated. He was finally confirmed with more than 70 votes in the Senate.

During the 17 months I chaired the Judiciary Committee during President Bush's first term, we confirmed 100 of his judicial nominees and 185 of his executive nominees referred to the Judiciary Committee. And yet 10 months into President's Obama's first term, we have confirmed only 2 of his nominations for circuit and district courts and 40 of the executive nominees that have come through our committee.

I hope that, instead of withholding consents and filibustering President Obama's nominees, the other side of the aisle will join us in treating them fairly. We should not have to fight for months to schedule consideration of the President's judicial nominations and nomination for critical posts in the executive branch.

I look forward to congratulating Mr. Lange and his family on his confirmation today. I commend Senator JOHNSON for his steadfastness in making sure his State is well served.

EXHIBIT 1

COMMENTARY: SECOND CIRCUIT APPEALS COURT OPENINGS NEED TO BE FILLED

(By Carl Tobias)

The country's attention was recently focused on the Senate confirmation vote for U.S. Second Circuit Court of Appeals Judge Sonia Sotomayor, President Barack Obama's initial Supreme Court nominee and judicial appointment. This emphasis was proper because the tribunal is the highest court in the nation and decides appeals involving fundamental constitutional rights.

Nonetheless, the same day that Justice Sotomayor received appointment, Second Circuit Judge Robert Sack assumed senior status, a type of semi-retirement, thereby joining his colleague, Guido Calabresi, who had previously taken senior status. Moreover, on Oct. 10, Judge Barrington Parker also assumed senior status. These developments mean that the Second Circuit will have vacancies in four of its thirteen authorized judgeships.

Operating without nearly 25 percent of the tribunal's judicial complement will frustrate expeditious, inexpensive and equitable disposition of appeals. Thus, President Obama should promptly nominate, and the Senate must swiftly confirm, outstanding judges to all four openings.

The numerous vacancies can erode the delivery of justice by the Second Circuit, which is the court of last resort for all but one percent of appeals taken from Connecticut, New York and Vermont. The tribunal resolves more critical business disputes than any of the 12 regional circuits and decides very controversial issues relating to questions, such as free speech, property rights and terrorism.

Among the appellate courts, the Second Circuit needs more time to conclude appeals than all except one, which is a useful yardstick of appellate justice. The August loss of two active judges and the October loss of a third will exacerbate the circumstances, especially by additionally slowing the resolution of cases that are essential to the country's economy.

There are several reasons why the tribunal lacks almost one quarter of its members. Judge Chester Straub took senior status in July 2008, and President George W. Bush nominated Southern District of New York Judge Loretta Preska on Sept. 9 after minimally consulting New York's Democratic Senators Charles Schumer and Hillary Clinton. September was too late in a presidential election year for an appointment, and the 110th Senate adjourned without affording the nominee a hearing.

Moreover, President Obama has nominated no one for the Calabresi or Sack opening, although both jurists announced that they intended to take senior status last March. In fairness, Judge Calabresi did not actually assume senior status until late July, while Judge Sack only took senior status and Justice Sotomayor was confirmed in August.

President Obama has implemented several measures that should foster prompt appointments. First, he practiced bipartisanship to halt the detrimental cycle of accusations, countercharges and non-stop paybacks. Moreover, the White House has promoted consultation by seeking advice on designees from Democratic and GOP Senate members, especially home state senators, before official nominations. Obama has also submitted consensus nominees, who have even temperaments and are very smart, ethical, diligent and independent. The Executive has worked closely with Senator Patrick Leahy (D-Vt.), the Judiciary Committee chair, who schedules hearings and votes, and Senator Harry Reid (D-Nev.), the Majority Leader, who arranges floor debates and votes, and

their GOP counterparts to facilitate confirmations.

Emblematic is the President's nomination of U.S. District Judge Gerard Lynch, who served with distinction on the U.S. District Court for the Southern District of New York since 2000. New York Democratic Senators Schumer and Kirsten Gillibrand expeditiously suggested the superb trial judge to Obama, who nominated Lynch on April 2. By mid-May, the panel conducted Lynch's confirmation hearing, and on June 11, the committee approved Lynch. In mid-September, the Senate confirmed Lynch on a 94-3 vote.

Senator Schumer's Sept. 9 announcement that he had recommended District Judge Denny Chin to the White House and the jurist's Oct. 6 nomination are precisely the correct approaches. The New York and Connecticut senators must continue suggesting excellent candidates for the three Second Circuit openings which remain. Obama must swiftly consider their proposals and nominate outstanding prospects. The Judiciary Committee should promptly afford hearings and votes, while the Majority Leader ought to expeditiously schedule floor debates and votes.

Judge Sotomayor's Supreme Court elevation, the assumption of senior status by Judges Calabresi, Parker and Sack and Judge Lynch's recent Senate confirmation mean there are four openings in the Second Circuit's thirteen judgeships. President Obama should cooperate with the Senate to quickly fill the vacancies with superior judges, so that the tribunal can deliver appellate justice.

Mr. LEAHY. Mr. President, I ask unanimous consent that my further remarks be charged against my time in connection with this nomination.

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

(The remarks of Mr. LEAHY are printed in today's RECORD under "Morning Business.")

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I wish to briefly make a few comments about the confirmation vote we will soon be having on supporting this nominee. I saw him, as a member of the Judiciary Committee, and we made inquiry of him. I liked him. He handled himself well.

He has been a strong and ardent Democrat all his life—an active Democrat. He was educated, I believe, at the University of South Dakota and has practiced law a long time there. I think he has the ability and the commitment—he said he did and I believe him—not to allow his politics to influence his decisionmaking once he puts on that robe; that he will be objective and fair; that he will comply with the oath a judge takes to be impartial; that he will provide equal justice for the poor and the rich; and that he will serve the laws of the United States under the Constitution. So we moved

him forward, and I am glad he will be confirmed.

I will note that some nominees I will not be able to support, and I would expect some others may object as well. It is our responsibility to be careful and to be cautious in making decisions about judges because they are given a lifetime appointment. They can't be removed for bad decisionmaking. I believe the President has submitted two more nominees to the district bench. There are 74 vacancies in the Federal courts in America as of today. A few days ago, there were 9 nominations pending—this is 1 of them—and now there are 11 nominations, I understand, pending.

As the President gets his machine up and running and starts submitting nominees, I think we will have good hearings. My view is that if they are qualified, it doesn't make any difference to me if they are an active, partisan, campaigning Democrat. That is fine. The question simply is, once they put on the robe and they are required to decide cases, can they put aside their personal feelings, backgrounds, emotions, and partisanship? Most judges can.

I practiced in Alabama, where judges run on a party ticket. They run as Republicans and Democrats. Everybody knows which of them—very few—carry those biases with them.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair, and I urge my colleagues to support the nomination.

The PRESIDING OFFICER. (Mr. UDALL of New Mexico.) The question is, Will the Senate advise and consent to the nomination of Roberto A. Lange, of South Dakota, to be United States District Judge for the District of South Dakota?

Mr. SESSIONS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 324 Ex.]

YEAS—100

Akaka	Carper	Gillibrand
Alexander	Casey	Graham
Barrasso	Chambliss	Grassley
Baucus	Coburn	Gregg
Bayh	Cochran	Hagan
Begich	Collins	Harkin
Bennet	Conrad	Hatch
Bennett	Corker	Hutchison
Bingaman	Cornyn	Inhofe
Bond	Crapo	Inouye
Boxer	DeMint	Isakson
Brown	Dodd	Johanns
Brownback	Dorgan	Johnson
Bunning	Durbin	Kaufman
Burr	Ensign	Kerry
Burriss	Enzi	Kirk
Byrd	Feingold	Klobuchar
Cantwell	Feinstein	Kohl
Cardin	Franken	Kyl

Landrieu	Murray	Specter
Lautenberg	Nelson (NE)	Stabenow
Leahy	Nelson (FL)	Tester
LeMieux	Pryor	Thune
Levin	Reed	Udall (CO)
Lieberman	Reid	Udall (NM)
Lincoln	Risch	Vitter
Lugar	Roberts	Voivovich
McCain	Rockefeller	Warner
McCaskill	Sanders	Webb
McConnell	Schumer	Whitehouse
Menendez	Sessions	Wicker
Merkley	Shaheen	Wyden
Mikulski	Shelby	
Murkowski	Snowe	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The Republican leader is recognized.

MEDICARE PHYSICIAN PAYMENTS

Mr. McCONNELL. Mr. President, I am going to take a moment of my leader time. Americans are increasingly alarmed by the expansion of our national debt and this spending binge we are putting on the national credit card. They are asking us to do what they have been doing. They want us to take out our scissors and cut the credit card. They want us to live within our means so their children and their grandchildren do not wake up in the morning to find the American dream buried under an avalanche of debt.

Our fiscal situation has simply spiraled out of control. Yet the proponents of this measure want to put another quarter of a trillion dollars on the Federal credit card. Republicans offered a series of fiscally responsible ways to prevent pay cuts to our physicians. That was not agreed to.

Let me remind everybody, we are in very dangerous territory. I am going to vote against this deficit-expanding bill because enough is enough. I hope, on a bipartisan basis, we will send a message to the American people that we do not intend to charge from \$¼ trillion to \$300 billion on the nation's credit card by approving this measure.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we have been aware of the fact that because of activities and actions of the Republican-dominated Washington for a number of years, that the doctors who take Medicare patients have been hammered so hard that not all doctors take Medicare patients.

We want senior citizens, Medicare recipients, to be able to go a doctor. We do not want all of those folks going to Medicare Advantage. We want Medicare to survive as a program.

Because people who ran this town for a number of years did not like Social Security, tried to privatize that, did