about, and it poses very fundamental questions for us in this country: Who are we? What do we stand for? Are we going to change the current system?

There are those fighting change in the system, and those leading the fight are health insurance companies. They are making plenty of money under the current system even though causes such as Marcus Evans' end up being untreated, and young men end up suffering as a result of it.

That is why this health care debate is so important. I hope at some point, a couple, maybe even three Republican Senators would step up and say: We want to be part of this historic debate. We don't want to stand on the sidelines and complain about the plays that are being called. We want to be into the actual field of battle to help craft a bipartisan bill.

So far they have turned us down every step of the way except for one Senator, Ms. SNOWE of Maine. I hope that can change, and I hope those who come to the floor every day and complain about health care reform will take 1 day to propose their suggestions. What do they want to do? If they want to stick with the current system, if they do not want to change health care as we know it today, have the courage to stand up and say just that. But, unfortunately, they have said over and over again: We want to criticize. We want to opt out. We don't want to be part of this debate.

That doesn't solve the problems our Nation faces.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, first let me compliment my colleague from Illinois. He is right that the health care system in this country is in need of repair or reform. He is right also about the people who are out there believing they are insured when in fact they are one serious illness away from bankruptcy.

Ten years ago in Fargo, ND, I met a woman who had $600,000 in the bank. She said she had a job, she had health insurance, and she had equity in a home. Ten years later it was gone. She has a very serious illness. She is a quadriplegic and needs a substantial amount of care, and all those assets are gone. She had insurance and all those assets are gone because her insurance had a cap.

A lot of people don't know that. They say: I have health insurance. Their insurance often has a cap on how much the insurance company will pay in the aggregate, which means they are just one serious illness away from bankruptcy. That is just one among others of the reasons there needs to be some change with respect to the health care issue.

I think this will be difficult. I commend the majority leader for trying to put a bill together. It will come to the floor of the Senate. We will have an opportunity to review it and offer amendments, which is the way it should be. My hope is at the end of the day we will be able to advance the issue of health care and improve the health care system in this country.

FEDERAL RESERVE POLICY

Mr. DORGAN. Mr. President, I wanted to mention very briefly—and I will speak about this a bit more later—the daily news about the payment of very large bonuses by some of the largest financial firms that received TARP funds or other funds from the Federal Government to try to keep them afloat during difficult times last year. The notices of the bonuses and profits of those firms at this point are very troubling to me and to a lot of other people.

I want to mention that a group of us a while back wrote to the Federal Reserve Board asking the Federal Reserve Board to release information about how much money went out the back door of the Federal Reserve Board when, for the first time in history, they allowed investment banks to come to the loan window of the Federal Reserve Board and get direct loans. For the first time in history, last year, they did that.

Now the question is, Who got money from the Fed's direct window? Under what conditions did they get that money? How much money did they get? A lot of us have asked the Federal Reserve Board to release that information.

Is that information important? It sure is, to me. Are the companies that are now proposing to pay the very large bonuses the same companies that got money out of the direct loan window of the Fed for the first time in history? Probably. What conditions were attached to that money? What were the rates, if any? We would like to know the specifics.

On September 16, the Chairman of the Federal Reserve Board wrote back to us saying that releasing these names would hinder the Fed's assistance efforts.

That is just a specious argument. The American people's money is put at risk. The American people have the right to know how much money went out that direct lending window at the Fed. We have a right to know—Members of Congress, the American people have a right to know. The Federal Reserve Board is saying we don't have a right to know and they don't intend to tell us.

I am going to talk about this a bit more later. There was a related FOIA case in which a judge found the Federal Reserve had ''improperly withheld agency records.'' The judge called the Fed's argument that borrowers would be hurt if their names were released—the judge says ''that was conjectural, without evidence of imminent harm.''

Despite the fact that the judge has determined that, we still don't have a release of this information. In a news article of a congressional hearing, it said a Federal official said the Fed was ''giving serious consideration'' to releasing the names of firms that received assistance.

In the same article they quoted Fed General Counsel Scott Alvarez as saying at the hearing:

> We would be happy to work with you to establish procedures for disclosure.

A few days following that a Bloomberg news article said:

> The Fed had decided to appeal the ruling that had ordered the Fed to release the information.

The question is, Why does the Fed believe we and the American people do not have a right to know? It makes no sense to me. I am going to speak about this at greater length later, but, clearly, as big bonuses are going out the back door, don't we have a right to know how much money went in the front door from the Federal Reserve to these institutions? How much, at what rate, and so on? I am going to continue to ask these questions.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mrs. GILLIBRAND). Morning business has expired.

EXECUTIVE SESSION

NOMINATION OF IRENE CORNELIA BERGER TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Irene Cornelia Berger, of West Virginia, to be United States District Judge for the Southern District of West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Madam President, I rise to speak on precisely the issue the clerk reported. That is something which is extremely important to me and also extremely important to the people of West Virginia, a historic decision we are going to make.

Today the Senate will consider the nomination of Judge Irene Berger to serve on the U.S. District Court for the Southern District of West Virginia. I have had the pleasure of knowing Judge Berger for many years and having a very high regard for her and liking her very much for many years. I continue to be amazed by her tremendous intellect, her calmness—a very marvelous calmness which speaks of integrity and knowledge and fearlessness in the face of whatever may come

up—and, of course, her complete dedication to public service, which I will talk about.

She is a phenomenal person and a true professional, which is why I am so proud to join with Senator BYRD in recommending her to the President for this judgeship. Without any doubt, Judge Berger is one of the most qualified people to serve on the Federal bench. She truly is unmatched—in her professionalism and in her experience and in her demeanor—for this position. She has the temperament that should be expected of any judicial nominee, which is not just calmness and the right demeanor, but she embraces the courtroom, masters the courtroom. She is in charge of the courtroom. It is a wonderful thing.

She is very smart, obviously. She is very fair. She is dispassionate, she is rational, she reaches her decisions in a very calm and deliberative way, showing respect and equal treatment to all claimants before her in the courtroom.

I think it is perhaps, and I would judge, her upbringing that helped Judge Berger to be the outstanding person and judge that she is today. She grew up in a very large family in one of the four poorest counties in the United States of America. She worked hard, got a good education, and ultimately earned her law degree from the West Virginia University College of Law.

Rather than seeking—which would make some sense in view of what she had been through—a high-paying job in a corporate law firm, which would have been hers just for the asking, so to speak, she decided to do what is natural to her, which is to give back to her community and to her State by devoting her entire 30-year legal career to serving her fellow West Virginians. In so doing, she has gained profound experience at nearly every level of our judicial system.

She began her career as a legal aid attorney, protecting the rights of our State's most vulnerable citizens, and then kept our communities safe by serving for 12 years as a prosecuting attorney in Kanawha County, WV, which is the county in which I live. She would go on to serve briefly as an assistant U.S. attorney for the Southern District of West Virginia before being appointed to fill a vacancy as a circuit judge for the Thirteenth Judicial Circuit of West Virginia, a position she held for 15 years.

As an attorney and a jurist, Judge Berger's hard work and determination have earned her the unqualified respect of all of her peers. Federal judges—everybody has written in saying this is the best person.

After her initial appointment to the circuit court, the voters of Kanawha County, WV—and that was part of why that position in the court is different from the one she is now hopefully going to be voted into—voted three times to keep her in that office because of her reputation as an honest, thoughtful, and skilled jurist.

I think we all agree the Federal judicial system is fundamental to our democracy's continued vitality, and there is absolutely no one I trust more than Judge Berger to faithfully and skillfully serve in this enormously important role.

Those are words, of course, but they are words, in my case, that come from deep within me. The American people deserve to know when they enter the courtroom that their judge is committed to justice and to equality and will treat them fairly, and that is exactly the type of judge Irene Berger is and will continue to be if we make that possible.

She made that clear in her confirmation hearing by saying:

> I want to say very strongly that I will ensure that all parties are treated fairly and equally. They will be heard equally, be they rich or be they poor.

Judge Berger has also remained an integral part of our community and our State. With her uncommon wisdom and insight she assumed leadership positions, obviously, within the court system and has been called to serve and agreed to serve on a number of boards of nonprofit organizations and educational institutions.

She's writ large in life in West Virginia, I just have to say that. Her honors and awards are many. I almost hesitate to mention them because that is what everybody does, but it should be said: West Virginia College of Law, Outstanding Woman of Law Award; YWCA Woman of Achievement; the American Bar Association Foundation Fellowship; West Virginia University's Outstanding Alumna; and the NAACP Image Award for Leadership, to name just a few.

I am perhaps most impressed by Judge Berger's courage and determination and her refusal to back down from any worthwhile challenge. She was one of the first students to integrate her local elementary school in McDowell County. That was not easy. McDowell County is the most southern county in West Virginia and, in fact, most of it is south of Richmond, VA.

She is the first in her family to attend college. That can only be admirable. That can only talk about sacrifice and determination in a close family unit, family values. She was the first African-American woman to serve as a circuit court judge in West Virginia.

If confirmed today, she would, I proudly say, become the first African-American Federal judge in the history of West Virginia. Granted, the history of West Virginians is not as long as the history of New York. But it goes back to 1863, I would say to the Presiding Officer, and we are very proud of that.

I would like to close by personally thanking Judge Berger and her family. Her dedication to her country and State means so much to me. I wish to see her confirmed. I am not a lawyer, but I have been in West Virginia a long time. I started as a VISTA volunteer. I know a good person when I see one.

Her willingness to assume this important role speaks volumes about her character as a person and as a judge. I would like to thank President Obama for his leadership in nominating Judge Berger for this position. He could not have selected a more qualified person. I cannot wait for them to meet.

Finally, I would also like to thank Majority Leader REID, Minority Leader MCCONNELL, Chairman LEAHY, Ranking Member SESSIONS, and the whole Judiciary Committee for allowing us to move forward on this critical nomination by, I will have to say, a unanimous vote for forwarding her nomination.

We can rest assured Judge Berger will serve with enormous honor and distinction, as her predecessor, the Honorable David A. Faber, served before her.

I am proud and all West Virginians deserve to be proud and are proud, even if they have no idea what is going on right now, as one of our own premier legal minds and unwavering leaders continues to serve our Nation and the cause of justice.

I yield the floor, and I ask unanimous consent that all quorum calls during the debate on the Berger nomination be equally charged to both sides.

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

Mr. ROCKEFELLER. 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. CARDIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CARDIN. Madam President, I know time has been reserved for Members to debate the confirmation of a district court judge in West Virginia. I certainly support that confirmation. It is interesting that there are not too many Senators coming to talk about this particular judge, even though there was a request that we reserve time on the floor in order to debate the nomination.

I raise this because there are four nominees ready for confirmation to the courts of appeal and six district court judges who are ready for confirmation, having been moved through the committee, who, for some reason, Republicans are now not allowing us to bring to the floor for confirmation. This is a deliberate effort to try to slow pace of the confirmation process of Federal judges appointed by President Obama.

I think this is wrong, and people should understand it. In my own circumstance in Maryland, we have a judge who has been approved by the committee for the circuit court of appeals, Judge Andre Davis. A hearing took place in April of this year. The Judiciary Committee reported out his confirmation by an affirmative vote of 16 to 3. This is clearly a nonpartisan

recommendation. Judge Davis is highly respected by members of the bar in Maryland. He has 22 years' experience as a district court judge. He has handled all types of cases. He has been recommended as being fair and even-handed and is ideally suited to serve on the appellate court. He will add diversity to the court, being the third African American, when he is confirmed, and he will be confirmed. There have been anonymous holds put on appellate court judges on a rotating basis and, in some cases, on district court judges, in an effort to slow down the process.

When we get a chance to vote on his confirmation, whether it requires a cloture vote or not, he will be overwhelmingly approved, as he should be. He is well qualified to serve on the appellate court.

I am somewhat perplexed. Floor time is valuable. Time has been set aside now to talk about the confirmation of a West Virginia district court judge. Yet I don't see too many Members rushing down to speak. Why haven't we brought up the other six district court judges ready for action? Why haven't we brought up the four appellate judges, if there is a desire to debate, so we have time now. Let's debate the issue. If there is a need for a vote, let's determine how much time is necessary and then let's get a vote. If there is a sincere effort to filibuster, which I find regrettable, then notify the leadership. Let's schedule a cloture vote on these nominations.

The bottom line is, this is an abuse of the rights of an individual Member of the Senate, and certainly it is wrong for us to hold up the confirmation of judges who are prepared to take on this public responsibility. There is a bill pending that would create new judges. Why don't we fill the current vacancies? Why don't we get these appointments to the floor and vote on their confirmations?

I know in Maryland there is strong support for Judge Davis's confirmation. I hope we can work out arrangements and bring these nominations forward and carry out our responsibilities to vote up or down those who are nominated to serve on the Federal bench.

I know there have been accusations made back and forth. I opposed several of President Bush's nominees to the court. In each case, I made it clear I was prepared to vote at any time. I never delayed consideration of those appointments, including those to the appellate court. They were brought forward, and we voted them up or down. All I am saying to my Republican friends is let's bring these nominations to the floor of the Senate; let's get a chance to vote on these nominations; let's not schedule time to talk about a district court judge and that person's confirmation, when in reality there has been very little interest shown in coming forward.

I see the distinguished ranking member of the Judiciary Committee. He has been fair and has tried to work this out. I don't know what the issue is on his side on an individual Member objecting to other judges coming forward. I hope we will have a chance to bring forward other nominations so we may move forward with one of the principal responsibilities of a Senator, to act in the confirmation of Federal judges, to give advice and consent to the President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I rise to speak on President Obama's nominee to the district court for the Southern District of West Virginia, Judge Irene Cornelia Berger. The historic significance of her nomination should not be lost on anyone. If confirmed, she will be the first African American to serve on the Federal bench in the State of West Virginia. She has had a distinguished career. She has been a State judge for the last 15 years. Before that, she was a State prosecutor for 12 years and a lawyer for the Legal Aid Society. I enjoyed the dialogue we had during her confirmation hearing and was especially pleased to see her responses to the questions for the record. She indicated in those answers outright that she did not agree with the empathy standard President Obama has used, saying:

> A judge should apply the law to the facts of a case without being influenced by sympathy or empathy.

She further stated that it is never proper for a judge to indulge his or her own sense of empathy in deciding what the law means. I wholeheartedly agree and am pleased to be able to support her nomination. The President's nominations deserve deference, although we do have a constitutional responsibility to examine the nominees, to ask the tough questions, to support them when we can and to oppose them when that is the appropriate action.

I commend Chairman LEAHY on the pace of his hearings. Last week, the committee held its 16th judicial nominations hearing. But I wish to set the record straight about a few things. At this point in his Presidency, President Bush had nominated 60 judges, but only 22 nominees had hearings. In contrast, President Obama has nominated only 23 judges, including a Supreme Court nominee, which took a great deal of our time, as it rightly should. Yet 16 of his nominees have received hearings.

The Senate Judiciary Committee is doing its job. We are processing nominees at a reasonable pace, in a fair and bipartisan manner. There are those who say that Republicans are slow-walking nominees. I suggest that is a preemptive accusation to complain about something they think might happen. It is not happening, in my view. The raw numbers show that. Those same individuals also claim that the vacancy rate on the Federal courts is higher now and, therefore, we need to confirm more judges than we did during President Bush's first 2 years in office. However, the need to fill vacancies does not undercut the responsibility to properly vet those lifetime appointments.

Furthermore, we can only process the nominees we have before us. There are currently 22 circuit court vacancies but only 9 nominees before the Senate. There are 75 district court vacancies and only 10 nominees before the Senate. This chart shows that. These are the vacancies in blue and the red represents the circuit court nominees. These are the only the nominations we have received so far. To date, President Obama has announced a total of only 23 nominees, one of which was a Supreme Court nominee. By this time, the Bush administration had sent the Senate 60 nominees, almost three times as many.

Over the past few weeks, I have heard the chairman of our committee come to the floor and state that the pace of confirmations is not acceptable. I wish to point out a few numbers to those who now say Democrats confirmed a significant number of President Bush's nominees. As I told the chairman, I hate to get into this. We have been doing this for a number of years, but I am not going to remain silent while the record is distorted. We need to talk about perspective, and if we are going to continue to have tit-for-tat, I will be down here to explain the other side of the question.

President Bush had fewer nominees confirmed than any two-term President in modern history. President Clinton had 377 confirmed; President Bush only got 326. President Clinton was also able to confirm two Supreme Court nominees. Under the Bush administration, the Democrats held up qualified nominees for years in some cases, denying an up-or-down vote even though a majority of the Senators were ready and willing to confirm.

There are those who say the Republicans are filibustering nominees, and to them, I say that is not correct. A hold is not a filibuster. When a Member of this body has concerns about a nominee, they have a right to put a hold on that nominee. The majority leader has the prerogative to file cloture on that nomination. There were nominees that I have strongly opposed and have voted against, but I voted for cloture when the majority leader sought to bring up the nomination so the nominee would get an up or down vote. That is the way you overcome a hold.

Madam President, how much time do we have remaining?

The PRESIDING OFFICER. The minority has 15 minutes remaining.

Mr. SESSIONS. I think most of us in this body who were here remember that soon after President Bush was elected in 2000, a group of well-known liberal professors—Laurence Tribe, Marsha Greenberger, and Cass Sunstein—he is the one who has recently been appointed by President Obama to one of his administration posts who believes animals should have

lawyers appointed for them—met with the Democratic leadership. The New York Times reported at that time that they proposed changing the ground rules of the confirmation process. They proposed that Senators consider a nominee's ideology. For the first time in the history of the country, they proposed that the burden be shifted to the nominee to somehow prove they were worthy of the appointment instead of having the Senate respect the presumptive power of the President to make the nomination and then object if there was a disagreement. This was a major change in the history of the Senate. It was done by the Democrats when we had a Republican President.

It was clear to me then that as a result of that meeting, a majority of the Democratic Members of the Senate agreed. After the Democrats took control of the Senate a few months later when Senator Jeffords changed parties, the Senate confirmed only 6 of President Bush's 25 circuit court nominees. Five nominees had bipartisan support, and two were prior Clinton nominees. President Bush renominated two prior Clinton nominees. They confirmed them, but only a few others were confirmed. Yet the majority of President Bush's first nominees nominated on May 9, 2001, waited years for confirmation.

Priscilla Owen was nominated to the Fifth Circuit, a fabulous supreme court justice in Texas. It took 4 years for her to be confirmed. She was on the short list for the Supreme Court. She is a brilliant justice.

Now-Chief Justice John Roberts was nominated at that time for the DC Circuit—one of the most brilliant Justices I have ever seen come before the Senate. It took two years for him to be confirmed, and he had to go through two hearings.

Jeffrey Sutton, another brilliant nominee to the Sixth Circuit Court of Appeals, was confirmed but only after 2 years in 2003.

Deborah Cook was nominated for the Sixth Circuit—it took 2 years to get her nomination confirmed.

Dennis Shedd, nominated to the Fourth Circuit—it was a year and a half before he was confirmed.

Michael McConnell, a brilliant lawyer—and so is Dennis Shedd, but McConnell is a real intellectual—for the Tenth Circuit, it took a year and a half before he was confirmed.

Terrence Boyle waited almost 8 years, until his nomination lapsed at the end of President Bush's term. He never got a vote.

Perhaps the most disturbing story was that of Miguel Estrada, who was a brilliant, outstanding, well-qualified consensus nominee. He was nominated to the DC Circuit on May 9, 2001. He waited 16 months just to get a hearing—16 months—only to be confronted with unreasonable requests for more information. After almost 2 ½ years in limbo and a protracted 6-month long filibuster battle, we brought his name up a number of times, and he was blocked by filibuster. Mr. Estrada withdrew his name from further consideration, and we remain baffled as to why such a fine nominee was treated so poorly. His character was attacked and his nomination was ultimately blocked for no reason other than the fact that some said he was so capable he would have been on the short list for the U.S. Supreme Court.

I don't say all of this to say there is going to be payback. I do not believe in that. It is time for us to move forward with judicial nominees in the right way. I am saying this to set the record straight because I will not stand silent and have what is happening today be compared with the incredibly obstructive actions the Democrats took in early 2000.

That said, this Senate, when I think of many of its Members, understands that it would be wrong for us to be a rubberstamp for every nominee. We have a constitutional duty to vet nominees. As a minority party, we have a duty to ask the important questions that may not be asked at other points in the process.

During his campaign, President Obama pledged he would strive for a bipartisan administration, but the President has failed to put action behind those words in a number of instances. He has refused to renominate some of the noncontroversial consensus circuit court nominees who were not confirmed by the Senate in the last Congress, as President Bush did when he took office. For example, Glen Conrad had the support of his Democrat home State Senator. Yet he was never given a hearing before the end of the Bush administration. Peter Keisler had broad bipartisan support from lawyers and colleagues throughout the country, a brilliant and capable nominee, but never got a vote. He was denied a vote by the Democratic leadership. In addition, Mr. Keisler was praised in the Justice Department Inspector General's report, one that dealt with the danger of politicizing the Department of Justice. The IG examined it and praised Mr. Keisler because he spoke and acted in opposition to those who appeared to have allowed political considerations to play a role in hiring decisions. He focused on the candidate's qualifications. But rather than being rewarded for his courage, he fell victim to the very partisan wrangling he stood against.

Now, I think President Obama chose to set an aggressive tone by nominating Judge David Hamilton, a former board member and vice president for litigation of the Indiana chapter of the ACLU, as his first circuit court nominee. Judge Hamilton's nomination is clearly controversial. It was only exacerbated by the rushed hearing schedule on his nomination. Indeed, I think it is fair to say he is outside the mainstream of even President Obama's nominees. Instead of embracing the constitutional standard of jurisprudence, Judge Hamilton has embraced this empathy standard, this feeling standard. Whatever that is, it is not law. It is not a legal standard. He has said that he believes a judge will ''reach different decisions from time to time . . . taking into account what happened and its effect on both parties, what are the practical consequences.''

Judge Hamilton also appears to have embraced the idea of a living Constitution. In 2003, he indicated in a speech that a judge's role included writing footnotes to the Constitution. I am not aware that a judge has the power to write footnotes to the Constitution, which has been ratified by we the people of the United States of America.

When Senator HATCH questioned him about these comments in a followup question, he retreated somewhat but then gave a disturbing answer in the next question about judges amending the Constitution or creating new rights through case law.

This judicial philosophy has clearly impacted his rulings. He issued a number of controversial rulings during his time as a district court judge and has been reversed in some very significant cases. So that is why he is having difficulty on the floor of the Senate and has not moved forward.

Yet the Democrats will not call up another nominee, Judge Beverly Baldwin Martin for the Eleventh Circuit, on whom everybody is prepared to vote.

Andre Davis, whom we have heard about before, has been nominated to the Fourth Circuit. We have had a number of battles over the failure to fill some of the vacancies on that court. President Bush submitted a number of nominations and couldn't get them up for a vote. For example, Judge Robert Conrad, Judge Glen Conrad, Steve Matthews, and Mr. Rod Rosenstein. Mr. Rosenstein was nominated to a seat designated as a judicial emergency on November 15, 2007—the very seat for which Mr. Davis has now been nominated—and he was held up. These vacancies were basically maintained by our Democratic Senators from Maryland for 9 years. The ABA rated Mr. Rosenstein ''unanimous well qualified.'' He was unanimously confirmed as U.S. attorney for the District of Maryland. He held several positions in the Department of Justice under both Democrat and Republican administrations. But he waited 414 days for a hearing that never came. His nomination was returned in January of this year.

In 2008, a Washington Post editorial stated that:

> Blocking Mr. Rosenstein's confirmation hearing . . . would elevate ideology and ego above substance and merit and would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship.

So after a few weeks went by, the Democrats were already blaming the Republicans, saying they are not moving fast enough on Mr. Davis, who has some serious problems in his background, and I just have to say I am

concerned about it. He has been reversed quite a number of times. But he certainly has had his hearing. He had a hearing 27 days after his nomination, and he was voted out of committee on a split vote just 36 days later.

There is no question that Mr. Davis is a good man, but his record is a cause for some concern. He has been reversed by the Fourth Circuit numerous times in cases where he misapplied the law, including six criminal cases where he threw out evidence that could have been used to help convict a criminal. He was reversed at least six times in cases that he had wrongly dismissed because there remained unresolved issues between the parties. He dismissed the case in its entirety and the parties had to appeal. Six times he was reversed at great expense and delay. If he didn't accurately assess the facts or apply the law in these more simple cases at the Federal trial court level—some of them are not so complicated; others are—is he qualified now to be on the Fourth Circuit? So these are the concerns we have.

Mr. Chen, a U.S. magistrate, was recently nominated for the Northern District of California. He stated that he finds ''most rewarding . . . contributing to the development of the law via published opinion, especially if it comports with my view of justice.'' That is pretty nice if you can develop the law—in other words, make law and make sure it comports with your view of the law. A judge is supposed to be a neutral umpire. They are not supposed to use their moment on the bench to rewrite the law to make it say what they would like it to say. If they would like to write the law, let them run for Congress.

Mr. President, Judge Chen made a number of speeches and statements about which I am concerned. I will not go into that today. But these are some of the nominees who are going to have some difficulty on the Senate floor.

Most of the nominees, such as the one on whom we are about to vote, will go through in an expeditious manner. Too often a problem we are dealing with is that there is a philosophy out there—I don't think it is a legal philosophy but rather nonlegal—that it is legitimate for a judge to look outside the law in judging, and that it is legitimate for their personal policy preferences and those matters to impact their decisionmaking.

We are talking about a lifetime appointment to the Federal bench. There is no opportunity to examine the nominees after they have been confirmed. They should demonstrate that they will not render rulings that go beyond the plain meaning of the law.

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

Mr. SESSIONS. I thank the Chair and just say that I intend to support this nominee. I will conclude by saying that those of us in the minority intend to give these nominees a fair hearing and to allow the majority of them to have up-or-down votes promptly. But those we think should be objected to will have a difficult time.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Madam President, I know my friend from Alabama mentioned the ongoing issues of filling the judicial vacancies. We can talk about individual cases, and I am more than happy to do that. But I think we need to look at the record, at the number of judges, the number of vacancies, and the record during the different administrations.

There is a disturbing trend that is developing with the Republicans blocking President Obama's confirmations by inaction, by not allowing us to, in fact, bring those nominations to the floor for a confirmation vote.

I am going to use two charts to point out the differences we have seen with Republicans using tactics to deny confirmation votes and the time during the years when President Bush made the appointments. During the Clinton years, we saw an increase in the number of vacancies that could not be brought to the floor for a vote. It reached 110 vacancies in the judicial branch at the end of the Clinton administration. The Democrats worked with the Republicans during President Bush's years, under times when Republicans were in control and when Democrats were in control of Congress. The number went down to 53 percent when President Bush left office. We are now up to 94. We are seeing a significant increase in the number of unfilled positions. Yet there are noncontroversial nominees who have been approved by the Judiciary Committee who have not been brought to the Senate floor.

I will talk about the appellate court because we think it represents a deliberate effort to slow-walk the confirmation process.

When President Clinton was in office, we saw an escalating number of appellate court judges who were delayed and not acted upon—doubling from 16 to 32 when President Clinton left office. We know the appellate court is where most of the appellate decisions will be made because very few cases go to the Supreme Court. These are critical judges.

During President Clinton's years, the Republicans used every tactic they could to deny the confirmation of appellate judges. Look what Democrats did during President Bush, whether in the minority or majority. We not only reduced the number of vacancies on the appellate court, we brought it down—in 1 case, from 32 to 9. When President Obama took office, it was 13. It is now up to 21.

There are four nominees who have been approved by the committee who are ready for action right now on the floor of the Senate. This is an abuse of the rights of the minority. We need to vote on these confirmations. The appellate courts need these judges. The district courts need these judges. We have, right now, over 10 judges ready for a vote on the Senate floor, none of whom I believe will require an extraordinary vote because I think they are basically without controversy.

Let's get on with these responsibilities and bring these forward. These facts indicate that clearly there has been a deliberate effort, and it is not right. I ask my Republican friends to end this and let's bring up these matters for an up-or-down vote.

With that, Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

HEALTH CARE REFORM

Mr. KIRK. Madam President, as the Senate prepares to debate the critical reform of our Nation's health care system, I am privileged to stand at the Massachusetts desk from which the voice—that unmistakable, booming voice—of the most effective legislator of our time was heard throughout this Chamber that he loved for nearly a half century.

The voice of Senator Edward M. Kennedy called out against injustice, denial of opportunity, and needless suffering of every kind. Sometimes with humor, sometimes with indignation, he spoke skillfully and tirelessly as a champion of working families, the poor, the disabled, and those engaged in a constant struggle for economic and social justice.

Of all the issues on which he led the Senate and our Nation, the one Ted Kennedy called the cause of his life was the battle for affordable, quality health care. He saw the need as universal—made real by experiences deeply personal. He was the father of three children who faced serious illnesses and received the finest health care in the world.

He understood firsthand the anguish of a parent who learns that a child is gravely ill. He found it unacceptable that some Americans receive quality health care while millions of others do not.

For almost 50 years, his voice thundered in this Chamber and across the Nation with a clear and compelling message: affordable, quality health care must be a basic right for all, not a privilege for the few.

In Senator Kennedy's own maiden speech in this Chamber, he noted the conventional wisdom that freshman Senators should be seen and not heard. But he felt compelled to speak out on the Civil Rights Act of 1964 because it was the defining moral issue of that time.

As the newest of freshman Senators, who is honored to stand briefly in his place, I have no doubt about my obligation to Senator Kennedy, to the values and friendship we shared, to the citizens of Massachusetts, and to the country we love. So I am grateful for this opportunity to speak out at another defining moment for our Nation, on what I and Senator Kennedy believe to be the moral issue of this time.

At this moment, we are closer to realizing the long-held dream that all

Americans have access to quality, affordable health care than at any time in our Nation's history. By seizing this moment, we will, at long last, put America on equal standing with other nations that long ago assured their citizens quality, affordable health care as a matter of right.

Despite the urging of Republican and Democratic Presidents alike, from Theodore Roosevelt to Bill Clinton, the United States remains the only industrial Nation that has yet to guarantee health care for all its citizens.

It has been 40 years since Edward Kennedy gave his first speech on this issue. In an address at the Boston University Medical Center, he declared the time had come to establish a national plan to provide affordable and quality health care for every American.

Rough estimates at the time suggested 25 million were without any coverage. Today we have 46 million uninsured Americans.

In the four decades since Ted Kennedy issued that challenge, despite the expenditure of trillions of dollars and a passing of a generation, millions of Americans worry each day whether their health insurance will be there for them and for their children. They fear their insurance company will drop them if they are sick or set limits on their coverage that will leave them destitute. They wonder if their insurance will be adequate and if they are but one serious illness away from bankruptcy.

They ask why insurance companies are permitted to charge higher premiums for women than for men. They are afraid, if they lose their jobs, they will be unable to get new insurance because they have a preexisting condition. Worse, tens of millions of our fellow citizens go to bed each night praying their children will stay well because they have no insurance at all. They work hard, they play by the rules, they do everything possible to provide for their families, but they need every penny to put a roof over their heads and food on the table. In the end, they simply cannot afford health insurance.

After decades of falling short of the mark, quality, affordable health care for all Americans is, at long last, within their reach. Thanks to the leadership of Senator REID, Senator DODD, Senator BAUCUS, and others, in combining the bipartisan work of the Health and Finance Committees, and thanks to similar work being done in the House of Representatives and the leadership and support of President Obama, we are closer than ever to fixing our broken health care system.

Yes, there are issues yet to be resolved. In the days ahead, I, too, will advocate for a public option because we need to stimulate competition and reduce costs in the health care marketplace.

I will also speak for the so-called CLASS Act, a voluntary, self-funded, self-insured, deficit-reducing plan that will protect millions of Americans against the crushing cost of long-term services and support so necessary in their senior years.

But as this debate moves forward, we who are privileged to serve in this historic body, on both sides of the aisle, have the opportunity and the obligation to take the long view, to put aside partisan politics and come together to seize this unique and critical moment in our history.

Bipartisanship works for the people. Only 3 years ago, with Senator Kennedy's guidance, Democrats and Republicans in Massachusetts worked together to adopt a health reform plan approved by a Democratic legislature, signed by a Republican Governor, and implemented with essential support from a Republican President.

The experience of Massachusetts was bipartisan. It has helped to shape the legislation this Senate will soon consider. Our national legislation draws ideas from both sides of the aisle and from all parts of the political spectrum. Similar to our Massachusetts reform, it will make a lifesaving and cost-saving difference for millions of Americans, whatever their station in life and whatever their political persuasion.

It is regrettable that efforts for reform in the Senate and the House have been under assault by special interests that have a financial stake in our failing health care system. As part of that opposition, they have attacked the success of our reform in Massachusetts. But let me set the record straight.

First, because of our bipartisan reforms, less than 3 percent of the Massachusetts population is without health insurance today, lower than any other State.

Second, the most respected independent fiscal watchdog concluded that Massachusetts implemented its reform in a fiscally responsible and financially sustainable way.

Third, unlike every other State, employer-based health insurance is increasing in Massachusetts.

Finally, according to a recent statewide poll by the Harvard School of Public Health, 79 percent of the public, and practitioners in every sector of the Massachusetts health care system, including physicians, strongly supports our bipartisan reform.

Let me quote a recent message from a Massachusetts doctor:

> You will be glad to know that I just saw the very last uninsured patient in my panel of about 300 patients for whom I am the primary care physician. He is a 62-year-old diabetic electrician from Mattapan. He finally got his insurance last month—with help of [the reform law], we are now finally getting his eye exam, his blood work, and refilling all his prescriptions.

That is just one example of a substantial difference a bipartisan health reform measure has made in the lives of the people of the Commonwealth of Massachusetts. That is the kind of substantial difference bipartisan reform can make in the lives of people all across America.

I am the 100th Member, the most junior Member of this distinguished body. But I am hopeful that a newcomer's perspective will be received as a constructive contribution to this debate.

Let me be candid. At this moment, when American families are imperiled by economic hardship and uncertainty, it gives them no comfort to see the Senate so politically polarized over an issue that should be bringing us together on their behalf.

The accelerating health care and health costs crises strike fear in the hearts of the average American family. These crises should not be dividing this Chamber; they should be uniting us. These crises do not discriminate in their impact on our constituents. They are the common fears of Republicans and Democrats, Independents and the unenrolled, old and young, urban and rural, businesses large and small, workers organized and unorganized, the self-employed and the unemployed, married and single, straight and gay, and Americans of every ethnic or racial heritage.

These are the people we are honored to represent. They expect us to work together in their common interests and, I submit, they deserve no less.

Years from now, history will look upon this debate and record that this was our opportunity to act on a defining domestic obligation of our time. During the coming weeks, I hope each of us will take the long view, think beyond the politics of the day, and come together in good faith to do what is right for our people.

When I accepted my oath of office a month ago, much was made of my being the 60th vote for health reform. This debate should not be about one party reaching 60 votes. It should be about 100 Senators reaching out to each other to reform a health care system that will better reflect the true values and character of our Nation.

As this debate continues, we would do well to pause for a moment to hear Ted Kennedy's voice in the quiet of our hearts. You and I know he will urge us to seize this moment to come together in this common cause and to make sure, at long last, that all Americans will have access to the quality, affordable health care they have long deserved and now so urgently need.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I congratulate my colleague from Massachusetts, who has made his first comments on the floor of the Senate, what is traditionally called a maiden speech, and what for many years a speech that often took months, if not, in some cases, years for a Senator to make. The times have changed and, indeed, the issues have changed. Now Senators, by custom, address the floor much before that kind of time period has elapsed.

Let me say I am glad that is the custom, and I am glad my colleague, PAUL KIRK, is here to share in his ability to

be able to present his values and the values of Ted Kennedy and Massachusetts to the Senate, with respect to the issue he talked about today.

I cannot say that for many of us who sat here and listened to this, as we looked across the Senate at this desk, that there still is not an adjustment as we look there and do not see our friend Ted Kennedy but see, instead, the person who has been chosen to follow in his footsteps.

I know Ted Kennedy would be both enormously proud and enormously pleased that PAUL KIRK spoke the way he did today and chose to speak as he did about health care.

PAUL KIRK was in the Senate working for Ted Kennedy in 1969, when Ted Kennedy first took up the great cause of health care. It was no accident that he came to be here working for Ted Kennedy, though it was somewhat of an effort because PAUL had chosen to work in the Presidential campaign of Robert Kennedy. When Robert Kennedy was assassinated, PAUL felt there was not a place in politics for him, and so he stepped back for a moment. It took Ted Kennedy a considerable amount of personal persuasion and effort to give him a sense that working in the Senate, working with him was the best way to try to carry on. That was the beginning of an extraordinary working partnership. I think PAUL worked with Ted Kennedy until about 1977 or so in the Senate, but he never stopped working with him as both a friend and an adviser. He went on to become the founder of the Presidential Debate Commission. He chaired the Democratic National Committee. He has chaired the Kennedy Library, and now he comes to us as an extraordinarily appropriate replacement, to the degree there can ever be a replacement—we all understand the difficulties of that—for our friend Ted Kennedy.

I thank him for his words today. I thank him for his willingness to come and serve at a difficult time. I thank him for being willing to go through all the gyrations one has to go through to meet the standards of the Ethics Committee of the Senate to serve just, knowingly, for 4½ months. That is a great statement both about his feelings about being chosen to fill the seat he fills but also about his commitment to public service.

I thank my colleague for his comments about health care. He is absolutely correct; we are on the cusp of a historic choice in this country, and I think it is more than fitting that PAUL KIRK, who knows Ted Kennedy's staff, who had such a close relationship with him, who shares his values so intensely, is here to be part of this vote.

He is absolutely correct. While he is the 60th vote, it may change some of our ability to move or not move, the thought he expressed about our desire to have all Senators join in this historic moment and weigh in, in a way that permits more of them to take part is exactly what the Senate is about.

I close by saying, as I looked across at PAUL, I thought about this transitional moment, of his first speaking and following in the footsteps of Ted Kennedy from that seat and that desk. It reminds all of us that we all come and we go here. It gives us a sense of the timelessness, if you will, of this institution. It reminds us that while we do change and we come and go, this institution is here, the Congress is here, the country is here, the demands of the people are here, and good people keep coming here to try to meet those demands and live out the best values for our Nation.

I congratulate my colleague for representing Massachusetts so effectively, for keeping faith with Ted Kennedy and this institution, and helping to remind us of the importance of the work ahead of us in the days ahead.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, next to the door of Senator Kennedy's old office—now Senator KIRK's office—is a small brass plaque that Senator Kennedy had mounted near the door with an old Gaelic greeting: Cead Mile Failte—100,000 welcomes. With his first maiden speech on the floor of the Senate, I extend to Senator KIRK, my colleague, officially, Cead Mile Failte, 100,000 welcomes to this great body. The fact the Senator would stand and speak to an issue of such enduring significance, not only to the Nation but to Senator Ted Kennedy, is entirely fitting.

Forty-five years ago, Ted Kennedy gave his maiden speech on the floor of the Senate, addressing the moral issue of his time—the issue of civil rights. Over the years, he came to understand the issue of health care is an issue of civil rights. His son, Congressman PATRICK KENNEDY, tells the story when his dad was in the hospital recently recuperating from cancer, he would walk the wards. We can see him plodding along, going from room to room, talking to people about how they were doing and, more specifically, how they were paying for their medical care.

Ted never stopped caring about not only the many people he represented in Massachusetts and around the Nation but around the world. During the time he served in the Senate, he extended the reach of civil rights and opportunity through health care, with Medicaid and Medicare and COBRA and children's health insurance and so many other things that he was a part of. I am honored the Senator is here today, as he has said, to be the voice and the vote of Senator Edward M. Kennedy. The question asked is: Will the circle go unbroken? With the Senator's speech today, it is clear it is unbroken; that the Senator is carrying on the fine tradition not only of Senator Kennedy but of so many people who were inspired by his words over the years.

I congratulate my colleague on his maiden speech on the floor of the Senate.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, I simply wish to rise and acknowledge the wise words of a good man and a good Senator in the great tradition of Ted Kennedy.

I thank the Senator, for his work, his commitment, and his dedication. With his help, we will complete the work Senator Kennedy started.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

EXECUTIVE SESSION

NOMINATION OF IRENE CORNELIA BERGER TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA—Continued

The PRESIDING OFFICER. Under the previous order, the senior Senator from West Virginia is recognized for 5 minutes.

Mr. BYRD. Mr. President, I am very pleased that the Senate will vote today to confirm West Virginia Circuit Court Judge Irene C. Berger for a seat on the U.S. District Court for the Southern District of West Virginia. I thank Chairman LEAHY and Ranking Member SESSIONS for moving the nomination forward. Along with my colleague, Senator JAY ROCKEFELLER, I was proud to recommend Judge Berger, for she is not only an outstanding jurist, she is also an exemplary person. A native of Berwind, in McDowell County, WV, Judge Berger has devoted her legal career to public service in West Virginia.

As a young attorney, she provided legal services to those who were most needy. As a prosecutor, Judge Berger obtained many high-profile felony convictions. Judge Berger has served as a circuit judge for the Thirteenth Judicial Circuit of West Virginia for 15 years—1½ decades—and she has devoted countless hours of service to her community.

Through her drive and determination, Judge Berger broke barrier after barrier. She was the first in her family to attend college. She was the first African-American woman to serve as a circuit judge in West Virginia. Embodying true mountaineer spirit and pride, Judge Berger's contributions to legal service and to education have been substantial. Sitting on the bench, she will continue her fine service to her community and to the great State of West Virginia.