

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.

I want to be the first to congratulate Judge Berger, and I thank my colleagues for their support of this very fine lady.

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, it has taken nearly a month to obtain Republican consent to consider the nomination of Judge Irene Berger to the Southern District of West Virginia. Judge Berger is a consensus nominee unanimously rated "well qualified" by the American Bar Association's Standing Committee on the Federal Judiciary, the highest rating possible. Her nomination has the support of both of West Virginia's highly respected Senators. Senator BYRD, as the senior member of the Senate, is the President pro tempore and is the longest serving Senator in history. Senator ROCKEFELLER is a senior member and the chairman of the Commerce Committee. I thank the Senators from West Virginia for their statements in support of the nomination, their work on this nomination, and their recommendations of outstanding judicial nominations for West Virginia over many years.

Republican delay in the confirmation of this consensus nominee continues a pattern that has been followed all year. Last week, the Senate was finally allowed to consider the nomination of Roberto A. Lange to the District of South Dakota. I regret that the Republican minority allowed 3 weeks to lapse since the nomination was reported unanimously by the Judiciary Committee before allowing the Senate to consider it. They also required 2 hours of debate on the nomination, though they used fewer than 5 minutes to discuss the merits of the nominee. In that 5 minutes, the ranking Republican on the Judiciary Committee endorsed the nomination. That nomination had the support of both Senator JOHNSON and Senator THUNE, a member of the Senate Republican leadership. Ultimately, Judge Lange's nomination was confirmed 100 to 0, but only after weeks of unnecessary delay.

The pattern is being repeated today with respect to Judge Berger. When confirmed, Judge Berger will be the first African American in the history of West Virginia to serve as a Federal judge. For the last 15 years, Judge Berger has served as a circuit judge in county court. Before that, she spent more than a decade as a State and Federal prosecutor.

So I ask, why has the Republican minority delayed consideration of this experienced and highly qualified jurist and of this historic confirmation for the last several weeks? Will any Republican explain why there will remain nine other judicial nominations reported favorably by the Judiciary Committee on which Senate Republicans continue to refuse to allow the Senate to proceed? Two were reported in June and have been stalled for more than 4 months.

Last week, the Senate also finally confirmed the nomination of Judge

William Sessions of Vermont to chair the U.S. Sentencing Commission. An anonymous, unexplained Republican hold stalled that nomination for more than 5 months. The majority leader was forced to file a cloture petition in order to end the obstruction. Cloture petitions were previously required to overcome Republican obstruction on the nominations of David Ogden to serve as the Deputy Attorney General and Tom Perez to serve as the Assistant Attorney General heading the Civil Rights Division.

I said last week before the Senate unanimously confirmed Judge Lange that these delays are a dark mark on the Senate. They prevent us from doing our work. Worse, this obstruction means that nominees must place their lives on hold for an undetermined amount of time. The Senate should be the conscience of the Nation. These needless and harmful delays, particularly in connection to consensus nominees, make the Senate look foolish.

Judge Berger's nomination is one of 13 judicial nominations reported favorably by the committee this year to fill circuit and district court vacancies on Federal courts around the country. The President has worked hard to consult with Republicans and Democrats alike to make consensus, well-qualified selections. Unlike his predecessor, he has not sought to turn judicial nominations into a partisan matter. Ten of these judicial nominations were reported by the Judiciary Committee without a single dissenting voice. Yet, due to the pattern of Republican delay, this is just the fourth of those nominations allowed to be considered by the Senate.

It is now October 27. By this date in George W. Bush's first year in office, the Senate had confirmed a total of 12 lower court judges, including 4 circuit court judges. We achieved those results with a controversial and confrontational Republican President after a midyear change in the Senate to a Democratic majority, in spite of the attacks of September 11, despite the anthrax-laced letters sent to the Senate that closed our offices, and working virtually around the clock on the PATRIOT Act. By comparison, this year the Republican minority has allowed action on only three judicial nominations to the Federal circuit and district courts, with only one circuit court confirmation all year. Judge Berger's confirmation will raise the total judicial confirmations to only one-third of that achieved by this date in 2001.

I made sure that President Bush's judicial nominations were treated better than President Clinton's had been by the Republican Senate majority. By contrast, Senate Republicans are making sure that President Obama's nominees are treated worse even worse than they treated President Clinton's nominees. By this junction in President Clinton's first year, the Senate had confirmed twice as many judicial nominees as we have this year.

This is all despite the fact that President Obama sent nominees to the Senate 2 months earlier than did President Bush. This is despite bipartisan support from Republican Senators like Senator LUGAR, Senator THUNE, Senator Martinez, Senator ALEXANDER, Senator CHAMBLISS, and Senator ISAKSON for President Obama's judicial nominees to judicial vacancies affecting their home States.

When I served as chairman of the Senate Judiciary Committee during President Bush's first term, I did my best to stop the downward spiral that had affected judicial confirmations. Throughout my chairmanship, I made sure to treat President Bush's judicial nominees better than the Republicans had treated President Clinton's nominees. During the 17 months I chaired the Judiciary Committee in President Bush's first term, we confirmed 100 of his judicial nominees. At the end of his Presidency, although Republicans had chaired the Judiciary Committee for more than half his tenure, more of his judicial nominees were confirmed when I was the chairman than in the more than 4 years when Republicans were in charge.

Senate Republicans began 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 after today will have confirmed only four of his nominations for circuit and district courts while judicial vacancies skyrocket around the country. After reducing vacancies as low as 43 last year, even during the last year of President Bush's second term and a Presidential election year, vacancies have already more than doubled to 95 vacancies around the country in our Federal circuit and district courts. There are another 26 future vacancies already announced. These vacancies are at near record levels. We can do better. The American people deserve better. Justice should not be delayed or denied to any American because of overburdened courts.

When will Senate Republicans allow the Senate to consider the nominations of Judge Hamilton to the Seventh Circuit, Judge Davis to the Fourth Circuit, Judge Martin to the Eleventh Circuit, Judge Greenaway to the Third Circuit, Judge Honeywell to the Middle District of Florida, Judge Nguyen to the Central District of California, Judge Chen to the Northern District of California, Ms. Gee to the Central District of California, and Judge Seeborg to the Northern District of California?

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 Judiciary 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 Judge Joseph Greenaway to the Third Circuit has the support of both New Jersey 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.

The Senate's failure to adhere to its tradition of regularly considering qualified, noncontroversial nominees has not been limited to filling vacancies on the Federal bench. The Republican minority has irresponsibly stalled nominations to critical posts in the Department of Justice, depriving the President, the Attorney General, and the country of the leaders needed to head important divisions at the Justice Department. These are important leaders of our Federal law enforcement efforts. Presidents of both parties, especially newly elected ones, are normally accorded greater deference to put in place appointees for their administrations.

Yet, 10 months in to President Obama's first term, five nominations to be Assistant Attorneys General remain stalled on the Senate's Executive Calendar due to Republican opposition and obstruction. These are the President's nominees to run 5 of the 11 divisions at the Justice Department—nearly half. By comparison, at this point in the Bush administration the Senate had confirmed nine Assistant Attorneys General and only one nomination was pending on the Senate Executive Calendar. The difference is that the Republican minority is refusing to consider these nominations.

The President nominated Dawn Johnsen to be the Assistant Attorney General in charge of the Office of Legal Counsel at the Justice Department on February 11. Her nomination has been pending on the Senate Executive Calendar since March 19. That is the longest pending nomination on the calendar by over 2 months. We did not treat President Bush's first nominee to head the Office of Legal Counsel the same way. We confirmed Jay Bybee to that post only 49 days after he was nominated by President Bush and only 5 days after his nomination was reported by the committee.

Mary Smith's nomination to be the Assistant Attorney General in charge of the Tax Division has been pending

on the Senate's Executive Calendar since June 11—more than 4 months. We confirmed President Bush's first nomination to that position, Eileen O'Connor, only 57 days after her nomination was made and 1 day after her nomination was reported by the committee. Her replacement, Nathan Hochman, was confirmed without delay, just 34 days after his nomination.

President Obama's nomination of Ignacia Moreno to be the Assistant Attorney General in charge of the Energy and Natural Resources Division has been on the Senate Executive Calendar for over a month, even though it was reported by the Judiciary Committee by unanimous consent. By comparison, a Democratic majority in the Senate confirmed President Bush's controversial nomination of Thomas Sansonetti to the position only 1 day after it was reported by the Judiciary Committee.

Chris Schroeder's nomination to be the Assistant Attorney General in charge of the Office of Legal Policy has been pending on the Senate Executive Calendar since July 28. It was reported by voice vote without a single dissenting voice. President Bush's first nominee to head that division, Viet Dinh, was confirmed 96 to 1 only 1 month after he was nominated and only a week after he his nomination was reported by the committee. The three nominees to that office that succeeded Mr. Dinh—Daniel Bryant, Rachel Brand, and Elisabeth Cook—were each confirmed by voice vote in a shorter time than Professor Schroeder's nomination has been pending. Ms. Cook was confirmed 13 days after her nomination was reported by the committee even though it was the final year of the Bush Presidency. By contrast, the majority leader may have to file another cloture position in order to overcome Republican obstruction and obtain Senate consideration of Professor Schroeder's nomination.

Instead of withholding consents and filibustering President Obama's nominees, the other side of the aisle should 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 Judge Berger and her family on her historic confirmation, and I thank the West Virginia Senators for their strong support of the nominee through another extended and unnecessary delay.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Irene Cornelia Berger, of West Virginia, to be United States District Judge for the Southern District of West Virginia?

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. DEMINT).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Vermont (Mr. LEAHY) and the Senator from New Jersey (Mr. MENENDEZ) are necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 328 Ex.]

#### YEAS—97

Akaka	Enzi	Merkley
Alexander	Feingold	Mikulski
Barrasso	Feinstein	Murkowski
Baucus	Franken	Murray
Bayh	Gillibrand	Nelson (NE)
Begich	Graham	Nelson (FL)
Bennet	Grassley	Pryor
Bennett	Gregg	Reed
Bingaman	Hagan	Reid
Bond	Harkin	Risch
Boxer	Hatch	Roberts
Brown	Hutchison	Rockefeller
Brownback	Inhofe	Sanders
Bunning	Inouye	Schumer
Burr	Isakson	Sessions
Burriss	Johanns	Shaheen
Byrd	Johnson	Shelby
Cantwell	Kaufman	Snowe
Cardin	Kerry	Specter
Carper	Kirk	Stabenow
Casey	Klobuchar	Tester
Chambliss	Kohl	Thune
Coburn	Kyl	Udall (CO)
Cochran	Landrieu	Udall (NM)
Collins	Lautenberg	Vitter
Conrad	LeMieux	Voinovich
Corker	Levin	Warner
Cornyn	Lieberman	Webb
Crapo	Lincoln	Whitehouse
Dodd	Lugar	Wicker
Dorgan	McCain	Wyden
Durbin	McCaskill	
Ensign	McConnell	

#### NOT VOTING—3

DeMint Leahy Menendez

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.

#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will be a period of morning business until 5:30 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the leaders or their designees.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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