

Mr. KYL. The following Senators are necessarily absent: The Senator from Georgia (Mr. CHAMBLISS), the Senator from Louisiana (Mr. VITTER), and the Senator from Texas (Mrs. HUTCHISON).

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

The result was announced—yeas 67, nays 28, as follows:

[Rollcall Vote No. 176 Leg.]

YEAS—67

Akaka	Durbin	Mikulski
Alexander	Feinstein	Murkowski
Baucus	Franken	Murray
Bayh	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bennett	Inouye	Reed
Bingaman	Johanns	Reid
Bond	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (MA)	Kerry	Schumer
Brown (OH)	Klobuchar	Shaheen
Burr	Kohl	Snowe
Byrd	Landrieu	Specter
Cantwell	Lautenberg	Stabenow
Cardin	Leahy	Tester
Carper	LeMieux	Udall (CO)
Casey	Levin	Udall (NM)
Cochran	Lieberman	Warner
Collins	Lugar	Webb
Conrad	McConnell	Whitehouse
Dodd	Menendez	
Dorgan	Merkley	

NAYS—28

Barrasso	Enzi	Risch
Brownback	Feingold	Roberts
Bunning	Graham	Sessions
Burr	Grassley	Shelby
Coburn	Gregg	Thune
Corker	Hatch	Voinovich
Cornyn	Inhofe	Wicker
Crapo	Isakson	Wyden
DeMint	Kyl	
Ensign	McCain	

NOT VOTING—5

Chambliss	Lincoln	Vitter
Hutchison	McCaskill	

The bill (H.R. 4899), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. INOUE. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the title amendment is agreed to.

Under the previous order, the Senate insists on its amendments, requests a conference with the House on the disagreeing votes of the two Houses, and the Chair appoints the following conferees.

The Presiding Officer (Mr. WARNER) appointed Mr. INOUE, Mr. BYRD, Mr. LEAHY, Mr. HARKIN, Ms. MIKULSKI, Mr. KOHL, Mrs. MURRAY, Mr. DORGAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. JOHNSON, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. TESTER, Mr. SPECTER, Mr. COCHRAN, Mr. BOND, Mr. MCCONNELL, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mrs. HUTCHISON, Mr. BROWNBACK, Mr. ALEXANDER, Ms. COLLINS, Mr. VOINOVICH, and Ms. MURKOWSKI conferees on the part of the Senate.

UNANIMOUS CONSENT REQUEST—
H.R. 4853

Mr. GRASSLEY. As the majority struggles in an attempt to pass another massive deficit spending bill through Congress, biodiesel plants in Iowa and 42 other States continue to lay off workers because the Democratic-controlled Congress has not extended the biodiesel tax credit. This is a simple and noncontroversial tax extension that will likely reinstate more than 20,000 jobs nationwide and about 2,000 jobs in my State of Iowa alone.

These jobs have fallen victim to a tactic used by the Democratic leadership to hold this popular and noncontroversial tax provision hostage to out-of-control deficit spending here in Washington.

This past February I worked out a bipartisan compromise with Chairman BAUCUS to extend the expired tax provisions, including the biodiesel tax credit. However, the Senate majority leader decided to put partisanship ahead of job security for thousands of workers, and that compromise did not move ahead.

So I am here again to try to put thousands of Americans back to work producing a very clean and renewable fuel. Therefore, I ask unanimous consent to proceed to H.R. 4853; that my substitute, which contains a 1-year extension of the biodiesel and renewable diesel tax credits for all of the year 2010, be agreed to, and the bill, as amended, be read a third time and passed.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, reserving the right to object, and it is not with great pleasure, I object to the request offered by my good friend from Iowa. This provision he is seeking unanimous consent about is one of the provisions in the larger tax extenders bill that the House is working on and attempting to pass tonight. They are laboring mightily but so far have not been able to pass the extenders job legislation that would contain the provision mentioned by the Senator from Iowa. This is the tax credit for biodiesel and renewable diesel. It has created jobs. It is a good provision.

I might say to my friend, the jobs are now lost because it expired. It expired the end of last year. We will extend this provision. We should extend it and we will extend it. We are not able to extend it tonight by itself. Why? Because many other Senators have specific provisions in the job extenders legislation that are particularly applicable to their States.

One I am particularly interested in is the property tax deduction, irrespective of whether the taxpayer itemized his or her deductions.

There will be a time, when we get back after the recess, to try to get these provisions passed so jobs are created. But we have to do it together as a package. We can't do it singly, separately, tonight. I want to tell my good

friend from Iowa I will work with him when we get back after the recess. For the time being I feel obliged to object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Iowa.

UNANIMOUS CONSENT REQUEST—
EXECUTIVE CALENDAR

Mr. HARKIN. Mr. President, on the Executive Calendar, I ask unanimous consent the Senate proceed to executive session to consider en bloc Executive Calendar Nos. 427, 493, 494, 688, 500, 501, 521, 556, 581, 588, 589, and a number of others that the minority, I am sure, is aware of, and it includes all nominations on the Secretary's desk in the Air Force, Army, Foreign Service, Marine Corps and Navy—these are military people waiting to get their increases in rank. They have all been cleared and they need to be cleared so they can get their increases in rank—that the nominations be confirmed en bloc, the motions to reconsider be laid on the table en bloc, that no further motions be in order, that any statements relating to the nominations be printed in the RECORD, that the President be immediately notified of the Senate's action and the Senate resume legislative session.

These are nominees, as I said. First of all, they are military people waiting for their increase in rank. But it is also people such as Brian Hayes, a member of the NLRB; Mark Pearce, member of the NLRB, et cetera, et cetera.

Craig Becker, member of the NLRB; Anthony Coscia, Amtrak board of directors; Mark Rosekind, member of the NTSB. Here is David Lopez, general counsel of the EEOC. Here is Michael Punke, Deputy U.S. Trade Representative; Islam Siddiqui, Chief Ag Negotiator for the U.S. Trade Representative; Jeffrey Moreland, director of Amtrak; Carolyn Radelet, Deputy Director of the Peace Corps; Lana Pollack, Commissioner of U.S. International Joint Commission for the U.S. and Canada. And there are a number of others. I will not go through them all. They are a number of people who need to be in place to make our government work and run. That is who we are trying to ask unanimous consent that we can get them confirmed.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The Republican leader.

Mr. MCCONNELL. Mr. President, I would say to my good friend from Iowa, the majority leader and I have been working on a package of nominations. Unfortunately, we are snagged over one particular nomination which has already been defeated by the Senate, and that was the nomination of Craig Becker to be on the NLRB. The President then recessed Mr. Becker and recessed a Democratic nomination to the NLRB but not a Republican nominee to the

NLRB. There is a fundamental lack of equity and fairness involved, and that has been a significant hindrance in coming to a consent agreement.

Obviously, before we leave we will clear the military nominations. Those are really not in dispute. But typically what happens here before a recess, the majority leader and I get together and we try to work out as many of these as we can. To just clear the whole calendar involves, in addition, clearing judges who just got out of committee this week. We have a way that we sequence those who have been acceptable to both sides.

In short, I have not seen every single name on the list of the Senator from Iowa, but it is simply not the way we are going to go forward, certainly not this evening.

Accordingly, I would now ask unanimous consent that the Senate proceed to executive session to consider en bloc the following list of nominations that I will send to the desk. This is a list of approximately 60 nominations from the Executive Calendar.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Iowa.

Mr. HARKIN. I say to my friend from Kentucky, fairness and equity? OK. Let's talk about fairness and equity. Let's talk about this. Mr. Becker was brought up in our committee last fall, along with Mark Pearce and Mr. Brian Hayes. They all went through our committee—bipartisan. Mr. ENZI, the ranking Republican on our committee, voted for that, and so did the Senator from Alaska, Ms. MURKOWSKI.

The names were then forwarded to the Senate. They came to the Senate, and the leadership on the Republican side decided to filibuster—decided to filibuster. We had an agreement to move this package forward on the National Labor Relations Board.

Fairness and equity? Since 1985, we have never had a hearing for a member to be on the National Labor Relations Board who wasn't nominated for Chair because when the Republicans were in power, they would have their people, we would have ours, we would agree, and they would go through. That is what we did last fall with Mr. Becker and Mr. Pearce and Mr. Hayes. And I thought things were fine. That is the way we have always done things. We agreed. We came out on the floor. And then the Republican leadership decided to filibuster—decided to filibuster.

Well, what happened then was that at the end of the year—I want to set the record straight here—what happens is at the end of the last session, there is always a unanimous consent to carry

over the calendar, the Executive Calendar, from one session to the next.

One Senator, the Senator from Arizona, Mr. MCCAIN, objected to Mr. Becker. Under the rules of the Senate, then Mr. Becker had to go back to the White House and get renominated and sent back to the Senate.

The Republicans asked for a hearing on Mr. Becker. Now, mind you, we have never had a hearing on one of these people since 1985. As the chair of the relevant committee, I did not have to have a hearing. But I decided, Mr. Becker has nothing to hide. He is willing to confront and answer all questions in open session. So I agreed to have a hearing.

I could have had a hearing on Mr. Hayes, also, the Republican, but I said: No, we do not have to do that.

So I had a hearing. We brought Mr. Becker before the committee, in open session, to answer any questions anyone asked him. If I am not mistaken, I think only three people showed up to ask him questions. But what they did is they submitted questions in writing. The Republicans submitted 440 written questions to Mr. Becker, almost twice what they did for Justice Sotomayor going on the Supreme Court. There were 440 written questions, and Mr. Becker obliged and answered all of those questions. Well, the Republicans still objected—still objected.

Now the minority leader says he failed a vote in the Senate. That is not true because there was a filibuster. We needed 60 votes to overcome the filibuster. When we brought up Mr. Becker's name, he got 52 votes on the Senate floor. Quite frankly, he would have had more, but there were several Senators who were absent because of weather conditions. I know who said on the RECORD that they would have supported him. So it is not quite right when the minority leader says Mr. Becker did not get approved on the Senate floor. He did. He just could not get the 60 votes to overcome the Republican filibuster.

So, again, you know, Mr. Becker is well qualified. Even my Republican colleagues freely admitted that in the committee, that he was well qualified. Do you know what their objection was? He comes from a union background. He comes from a union background. To the Republicans, that is a mortal sin. Well, if you are Catholic, you know what that means. That is a mortal sin. That is unforgivable to Republicans to have a union background.

As I said, he was willing to answer any questions. He did, in writing. I have heard nothing—nothing from the Republican side pointing to some answer he gave that would disqualify him from being on the NLRB. They have simply drawn a line in the sand and said that because he has a union background, they are not going to support him and they are going to filibuster.

So here we are. We wanted to get through all of those nominations tonight. I read some of them. I did not

read them all. Ambassador to the Slovak Republic, Ambassador to the Dominican Republic, Ambassador to Niger, Deputy Director of the Peace Corps—they will not let them go through. Why? Because of one person—Mr. Becker—who has a union background and they do not want him on the NLRB.

Well, Mr. Becker has a recess appointment. He did get a recess appointment from the President. But they will not let him get a full appointment by the President. And they are willing to stop everything, stop every nomination because of their objections to Craig Becker even through Craig Becker got 52 votes here on the Senate floor.

So when the minority leader talks about fairness and equity, well, I think the fairness and equity is on this side of the aisle on this one. I am sorry to say that a lot of these people will not get their nominations. But, again, the Republicans do not care. They do not care. They would just as soon the government stop everything.

Do they care whether we have enough people in the Peace Corps to run the Peace Corps? They do not care. Do they care whether we have an Ambassador to the Slovak Republic? They do not care. Do they care if we have members on the TVA, the Tennessee Valley Authority, board of directors? Obviously not. They have been holding up these nominees for a long time. This is not the first time they have held up these nominees.

So fairness and equity? Well, I wish the minority side would show a little fairness and equity when it comes to decency and to abiding by agreements. We had an agreement. We had an agreement to move these people through as a package. We did that in committee. That agreement was broken by the Republicans, not by the Democrats.

I am sorry to have to take this time on the floor to correct my friend from Kentucky on fairness and equity, but I think the public has a right to know why we are where we are right now and who is responsible for the fact that we cannot get nominations through here on the Senate floor.

I yield the floor, and 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.

Mr. DURBIN. I ask unanimous consent to speak as in morning business.

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

Mr. DURBIN. I was trying to get down here when Senator HARKIN was completing his remarks, to join him, because I am as concerned as he is about the impact of these nominations that still remain on our Executive Calendar here at the Senate.

This publication comes out on a daily basis to tell us which nominations have been sent to the floor of the Senate by the committees. They do not reach the floor of the Senate until a process is followed which involves nomination by the President of the United States, an investigation of the nominee by agencies of the government and by our committees, and then consideration of those nominees.

Many committees have hearings where the nominees are called before them. Questions can be asked. They certainly are in the Judiciary Committee where I serve. Then, at the end of the day the committee decides whether to submit this nominee's name for the consideration of the full Senate.

So the fact that Senator HARKIN came to the floor this evening is an indication of the frustration many of us feel about what has happened.

So far since President Obama took office last year, the Senate has had rollcall votes on 51 nominations. There are others who have been approved without rollcalls. But of those 51 nominations which were subjected to rollcall votes, 22 were confirmed with more than 90 votes and 18 were confirmed with 70 votes or more. That means that almost 80 percent of those nominees have passed with overwhelming support.

Many of those votes took place after lengthy delays. In other words, these men and women who agreed to serve our Nation and to serve the President and made personal sacrifices to do that went through the long and arduous process, made it to the Senate calendar, and then had to wait. On average, the President's nominees have languished on this Senate calendar for over 105 days, with many taking much longer; more than 3 months for those who were sent to the Senate floor. I know because some of these nominees are people I have met and worked with, even people I have recommended to the President. It is an uneasy feeling to be nominated, to be waiting for your opportunity to serve in positions large and small, and then to be told, day after weary day, that the Senate just did not get around to it.

This week the Executive Calendar contains more than 107 names of nominees. More than 85 percent of those nominees came through the committee process with overwhelming support. Point of comparison for those who will say: The Republicans may be playing games now with nominations, but I am sure you Democrats did the same thing to President Bush.

Not true. At this time in President George W. Bush's Presidency, there were exactly 13 nominees on the calendar. There are over 107 nominees on the calendar at this moment. There is no comparison.

It is time for the Republicans to stop abusing the Senate's responsibility to provide advice and consent on the President's well-qualified nominees. If I take a look at some of these nomi-

nees, it is troubling because they are overwhelmingly qualified for the jobs for which they have been recommended.

The Illinois nominees currently on the calendar include Craig Becker to be a member of the National Labor Relations Board. He was recess-appointed after waiting for 16 weeks on the calendar. Mary Smith to be Assistant Attorney General, she has been on the calendar for more than 16 weeks. Gary Scott Feinerman, to be U.S. district judge for the Northern District of Illinois, has been waiting 6 weeks. He is a man eminently qualified who was passed out of the Judiciary Committee by voice vote. Sharon Johnson Coleman, another nominee from Illinois to be U.S. district judge, again approved by voice vote unanimously, has been sitting on the calendar for 6 weeks. Robert Wedgeworth to be a member of the National Museum and Library Services Board, has been waiting for 4 weeks; Carla D. Hayden, to be a member of the National Museum and Library Services Board, another 4 weeks; and Darryl McPherson, who we would like to have serve as a U.S. marshal in the Northern District of Illinois. He was just sent to the calendar. This is an indication. In the Northern District of Illinois, several years ago, we had the tragic murder of the family of a U.S. district court judge. So when we talk about filling the position of U.S. marshal in that particular district, it is because we know that there is a vulnerability for the men and women serving the government as judges, a vulnerability which resulted in a tragedy for one of our more celebrated and liked Federal judges in Chicago.

Why would we hold up this man's nomination? Wouldn't we want the U.S. marshal in place doing his job? It is an important responsibility administratively, but it is equally important to protect the men and women in the judiciary. Why would we want to delay that when we have been through the tragic murder of a family in the Northern District of Illinois?

That is why I wanted to join Senator HARKIN. We are leaving now for a little over a week over Memorial Day. Many of us will be back home for Memorial Day, then moving around in different places. This calendar will sit here for another 10 or 12 days. The men and women whose names are in nomination will wait another 12 days or 2 weeks before they can be considered. In the meantime, their lives are on hold. Their service to our country is delayed. The President's ability to put his team together has been diminished by this strategy from the Republican side.

Tonight Senator HARKIN tried to move 51 of these nominees. Senator McConnell objected. It is unfortunate, truly unfortunate, that we don't step forward and give these men and women a chance to serve the government and give the President a chance to have those in place who will make his administration complete. That is the only fair thing for us to do.

I hope when we return we will come to our senses and take a different strategy. More than 107 men and women whose names are on this calendar are waiting for us to make that decision. In fairness to the President and to the Nation, I hope we make it with dispatch.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, as the Senate recesses for Memorial Day, I wish the Republican leadership had worked with us to clear the nominations that have been pending on the calendar for far too long. There is now a backlog of 26 judicial nominees awaiting final Senate action. Nineteen of the 26 were reported by the Judiciary Committee without a single negative vote from any Republican or any Democratic Senator on the committee. There is no reason, nor is there any excuse, for the Senate not having promptly considered and confirmed those judicial nominees. Two other nominations received only one or as few as four negative votes. That means that six of the seven Republicans voted in favor of Judge Wynn to the Fourth Circuit, and nearly half the Republicans on the committee supported Jane Strach's nomination to the Fourth Circuit, as does Senator ALEXANDER. Still Republicans refuse to enter into time agreements on those nominations, the four others or, for that matter, any of the 26 judicial nominations they are stalling from consideration and confirmation.

The Senate is well behind the pace I set for President Bush's judicial nominees in 2001 and 2002. By this date in President Bush's Presidency, the Senate had confirmed 57 of his judicial nominees. Despite the fact that President Obama began sending us judicial nominations 2 months earlier than President Bush had, the Senate has only confirmed 25 of his Federal circuit and district court nominees to date.

Federal judicial vacancies remain over 100 around the country. Yet 26 judicial nominations considered and favorably reported by the Senate Judiciary Committee remain stalled awaiting final Senate action. The Senate should vote on all of them without further obstruction or delay.

Before the Memorial Day recess in 2002, there were only six judicial nominations reported by the Senate Judiciary Committee and awaiting final consideration by the Senate. They had all been reported within the last week before the recess began. This year, by contrast, Republicans have stalled nominations reported as long ago as last November. Only one of the 26 was reported close to this recess. The others, more than two dozen, have all been languishing without final action because of Republican obstruction. This is not how the Senate should act, nor how the Senate has conducted its business in the past. This is new and it is wrong.