

addressed in provisions of the intelligence authorization bill and my Control Spending Now legislation. While I will continue to fight for those provisions, I have asked General Clapper to tackle these issues with or without new statutory authorities. I will also continue to seek greater access by the GAO to the intelligence community, an issue on which General Clapper has expressed some flexibility.

Finally, General Clapper is in a unique position to address one of the great failings of intelligence reform thus far—the extent to which intelligence and intelligence-related activities are conducted by the military, away from the oversight of the congressional intelligence committees. In some cases, such as cybersecurity operations, I remain concerned about the division of authorities but have been kept reasonably informed. In other cases, specifically the Department of Defense's use of "Section 1208" authorities to assist foreign forces and irregular groups supporting counterterrorism operations around the world, I have generally been stonewalled. General Clapper has stated that, as DNI, these activities will not be his responsibility. But the DNI, particularly one with General Clapper's background, should be assertive in ensuring that the intelligence community and the military are operating in a coordinated fashion under coherent and consistent policies, and that the congressional intelligence committees are kept fully informed of all relevant programs and operations.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to consider en bloc the following nominations on the Executive Calendar: No. 883, J. Michelle Childs to be a United States District Judge;

No. 884, Richard Gergel to be a United States District Judge—both of these judges are from the State of South Carolina—No. 893, Leonard Stark to be a United States District Judge for the District of Delaware; and No. 657, James Wynn, to be a United States Circuit Judge; that the Senate proceed to vote en bloc on the nominations; that upon confirmation, the motions to reconsider be made and laid upon the table; that any statements relating to the nominations be printed in the RECORD, and that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nominations considered and confirmed en bloc are as follows:

#### THE JUDICIARY

J. Michelle Childs, of South Carolina, to be United States District Judge for the District of South Carolina.

Richard Mark Gergel, of South Carolina, to be United States District Judge for the District of South Carolina.

Leonard Philip Stark, of Delaware, to be United States District Judge for the District of Delaware.

James A. Wynn, Jr., of North Carolina, to be United States Circuit Judge for the Fourth Circuit.

#### LEGISLATIVE SESSION

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

#### UNANIMOUS-CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that at 3:30 p.m., Monday, September 13, the Senate proceed to executive session to consider Calendar No. 552, the nomination of Jane Stranch to be a United States Circuit Judge for the Sixth Circuit; that there be 2 hours of debate with respect to the nomination, with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that at 5:30 p.m. on that date, the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table; that any statements related to the nomination be printed in the RECORD; that the President of the United States be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

#### UNANIMOUS-CONSENT REQUEST—NOMINATIONS

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding an adjournment/recess of the Senate, that all nominations currently in committee or on the calendar remain in status quo, notwithstanding the provisions of rule XXXI, paragraph 6, of the Standing Rules of the Senate, except the following: Calendar Nos. 404, 591, 688, 696, 697, 698, 891; 933, 958, 1008; and the following in committee: PN797, PN1644, PN1024, PN1651, PN1631, and PN1987.

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

#### UNANIMOUS-CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to executive session and consider Calendar No. 886, Kimberly Mueller to be a United States District Judge for the Eastern District of California; that there be 1 hour of debate with respect to the nomination, with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that upon the use or yielding back of time, the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table; the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. I object.

The PRESIDING OFFICER. Objection is heard.

The Republican leader.

Mr. MCCONNELL. Mr. President, we just confirmed 47 nominations plus 3 district court judges, a circuit court judge, and we will continue to work on the balance of these when we return.

Mr. REID. Mr. President, 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. WHITEHOUSE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. WHITEHOUSE. Mr. President, I understand there has just been an agreement reached and entered into the RECORD regarding a number of appointments that were on the Executive Calendar. I understand further that—in fact, I discovered just recently—there is a rule anybody who is pending on the Executive Calendar when there is a recess of longer than 30 days needs to be resubmitted.

There are a number of judges who, applying that rule and the order, would need to be resubmitted by the President. Two of them, as I understand it, are district judges. What I would like to do is ask unanimous consent regarding those two. I know there is nobody from the minority party on the floor of the Senate right now, so I am not going to ask that unanimous consent and take advantage of the lack of their presence on the floor. But I would like to ask that someone come to the floor so I may ask unanimous consent, as to district court judges who are pending on the Executive Calendar, that the application of that rule be waived for this recess.

These are names that are going to be resubmitted anyway. It adds nothing to the process other than just an extra, sort of deliberate and unnecessary hassle to require those submission and committee procedures to be replayed.

It is also my understanding there has been a tradition in this body that while circuit court nominees are considered what one might call, for better or worse, political fair game, there has been a tradition of courtesy and comity regarding district court judges who sit in the Senator's home State when both of the home State Senators have agreed to and accepted the President's recommendations and supported it, given their blue slip to the committee and so forth.

So I guess I will put the Senate back into a quorum call so that I can discuss this with my colleagues on the other side. But I hope very much that as a personal courtesy they would accept that amendment to the order that was just entered, which I believe is consistent with the traditions and practices of the Senate.

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

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

Mr. WHITEHOUSE. Mr. President, I am in an interesting predicament. I am informed there is no one from the minority party in town; this being the end of session, everybody has headed home. Therefore, there is no one around to respond to my unanimous consent request.

I will confess, I am inclined to take advantage of this moment by propounding the unanimous consent, which I would obviously win. The Presiding Officer would grant the order, since there would be no objection.

But I also believe that to do so would be inconsistent with the courtesies and the traditions of the Senate, and so I will not take that step at this time. But it is frustrating to be in this position of holding myself back out of respect for the traditions and courtesies of the Senate, when I feel that, at the moment, I am on the losing end of a violation of the courtesies and the traditions of the Senate.

So by the rule of what is good for the goose, my inclination to take advantage of this moment is reinforced. But I have great respect for this body, and I think the tradition that one does not propound unanimous consent requests without a member of the minority party present to object or otherwise respond or vice versa is one that merits respect.

Notwithstanding the predicament I find myself in, let me just say, in that absence of courtesy that has brought me here, I will yield the floor and we can return to this question when the Senate resumes. But for any who are listening, I think we are taking a step that some may regret, when the tradition of respect for the judgment of the home State Senators regarding a district court judge in their home State is disregarded in this way.

I will say no more. I will follow up when we return to session.

I yield the floor and 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. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### SMALL BUSINESS LENDING FUND ACT OF 2010—Resumed

Mr. REID. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 5297) to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

Pending:

Reid (for Baucus/Landrieu) amendment No. 4519, in the nature of a substitute.

Reid amendment No. 4520 (to amendment No. 4519), to change the enactment date.

Reid amendment No. 4521 (to amendment No. 4520), of a perfecting nature.

Reid amendment No. 4522 (to the language proposed to be stricken by amendment No. 4519), to change the enactment date.

Reid amendment No. 4523 (to amendment No. 4522), of a perfecting nature.

Reid motion to commit the bill to the Committee on Finance with instructions.

Reid amendment No. 4524 (the instructions on the motion to commit), to provide for a study.

Reid amendment No. 4525 (to the instructions (amendment No. 4524) of the motion to commit), of a perfecting nature.

Reid amendment No. 4526 (to amendment No. 4525), of a perfecting nature.

Mr. REID. Mr. President, I ask unanimous consent that all pending amendments and the motion be withdrawn.

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

#### AMENDMENT NO. 4594

Mr. REID. Mr. President, I call up the Baucus-Landrieu-Reid substitute amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. BAUCUS and Ms. LANDRIEU, proposes an amendment numbered 4594.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

#### AMENDMENT NO. 4595 TO AMENDMENT NO. 4594

Mr. REID. I now ask to be reported the Bill Nelson first-degree amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. NELSON of Florida, proposes an amendment numbered 4595 to amendment No. 4594.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To exempt certain amounts subject to other information reporting provisions of the information reporting provisions of the Patient Protection and Affordable Care Act, and for other purposes)

At the end of subtitle B of title II, add the following:

#### PART V—ADDITIONAL PROVISIONS

#### SEC. \_\_\_\_ . CERTAIN EXCEPTIONS TO INFORMATION REPORTING PROVISIONS.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986, as amended by section 9006 of the Patient Protection and Affordable Care Act and section 2101 of this Act, is amended by redesignating subsection (j) as subsection (k) and inserting after subsection (i) the following new subsection:

“(j) COORDINATION WITH RETURNS RELATING TO PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.—This section shall not apply to any amount with respect to which a return is required to be made under section 6050W.”.

(b) INCREASE IN THRESHOLD AMOUNT AND EXEMPTION FOR SMALL EMPLOYERS FOR REPORTING OF PAYMENTS RELATING TO PROPERTY.—Subsection (a) of section 6041 of the Internal Revenue Code of 1986, as amended by the Patient Protection and Affordable Care Act, is amended by adding at the end the following new sentences: “In the case of payments in consideration of property, this subsection shall be applied by substituting ‘\$5,000’ for ‘\$600’ and this subsection shall not apply in the case of any person employing not more than 25 employees at any time during the taxable year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer.”.

(c) REGULATORY AUTHORITY.—Subsection (k) of section 6041 of the Internal Revenue Code of 1986, as redesignated by subsection (a), is amended by striking “including” and all that follows and inserting “including—

“(1) rules to prevent duplicative reporting of transactions, and

“(2) rules which identify, and provide exceptions for, payments which bear minimal risk of noncompliance.”.

#### (d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts with respect to which a return is required to be made in calendar years beginning after December 31, 2010.

(2) PROPERTY THRESHOLD.—The amendment made by subsection (b) shall apply as if included in the amendments made by section 9006 of the Patient Protection and Affordable Care Act.

(e) PUBLIC COMMENTS AND SUGGESTIONS.—In order to minimize the burden on small businesses and to avoid duplicative information reporting by small businesses, the Secretary of the Treasury or the Secretary's designee is directed to request and consider comments and suggestions from the public concerning implementation and administration of the amendments made by section 9006 of the Patient Protection and Affordable Care Act, including—

(1) the appropriate scope of the terms “gross proceeds” and “amounts in consideration for property” in section 6041(a) of the Internal Revenue Code of 1986, as amended by such section 9006,

(2) whether or how the reporting requirements should apply to payments between affiliated corporations, including payments related to intercompany transactions within the same consolidated group,

(3) the appropriate time and manner of reporting to the Internal Revenue Service, and