

Last year, 259,000 civil cases and 75,000 criminal cases were filed in the federal courts, enough to tax the abilities of the judiciary even when it is fully staffed. But today there are 103 judicial vacancies—nearly one in eight seats on the bench. Men and women who need their day in court must stand in longer and longer lines.

The problem is about to get worse. Because of projected retirements and other demographic changes, the number of annual new vacancies in the next decade will be 33 percent greater than in the past three decades. If the historic pace of Senate confirmations continues, one third of the federal judiciary will be vacant by 2020. If we stay on the pace that the Senate has set in the past two years—the slowest pace of confirmations in history—fully half the federal judiciary will be vacant by 2020.

As Justice Anthony Kennedy recently noted, the “rule of law is imperiled” if these important judicial vacancies remain unfilled. In 2005, Senate Republican leader Mitch McConnell called on Congress to return to the way the Senate operated for over 200 years, and give nominees who have majority support in the Senate an up-or-down floor vote.

I agree. It's time to address the crisis in our courts. It's time to confirm these judges.

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VACANT STARES—WHY DON'T AMERICANS WORRY ABOUT HOW AN UNDERSTAFFED FEDERAL BENCH IS HAZARDOUS TO THEIR HEALTH?

(By Dahlia Lithwick and Carl Tobias)

The prospect of a federal bench with nearly one out of every eight judicial seats vacant should scare the pants off every American. Yet few Americans are as worked up about it as those of us who think and worry about it a lot. Our argument was already a tough sell before the threat of global terrorism and a collapsed economy ate up every moment of the national political conversation. Now a 10 percent judicial vacancy rate seems like a Code Beige emergency in a Code Red world.

Part of the problem is politics: It has often seemed that the only people screaming for speedy judicial confirmations are panicked because it's their judges being blocked. The party not currently in control of the White House and Senate often sees less crisis than opportunity in a dwindling bench. Moreover, when the entire judicial selection process has been as fiercely politicized as it is has become lately, most Americans may suspect that empty benches might be better for democracy than full ones. But judicial vacancies are disastrous for Americans, all Americans, and not merely for partisan reasons, but also for practical ones. That's why in a recent speech, Justice Anthony Kennedy warned: “[I]t's important for the public to understand that the excellence of the federal judiciary is at risk. If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled.”

Yet this issue, which seems to light up editorial writers and Brookings scholars with such ease, appears to leave the rest of you cold. So here we are taking one last crack at scaring your pants off with some strictly nonpartisan facts about the dangers of judicial vacancies.

Justice delayed truly is justice denied. There are approximately 850 lower-court federal judgeships, of which more than 100 are currently vacant, while 49 openings in 22 states are classified “judicial emergencies.” Eighty-three of these are on the district courts—the trial courts that decide every important federal question in the country, on issues ranging from civil rights to environmental, economic, privacy, and basic

freedoms. Whereas judicial obstruction once reached no further than the federal appeals courts, for the first time even noncontroversial district court nominees are being stalled by arcane Senate reindeer games. It stands to reason that if you can't get into a courtroom, if the docket is too packed for your case to be heard promptly, or if the judge lacks sufficient time to address the issues raised, justice suffers. This will directly affect thousands of ordinary Americans—plaintiffs and defendants—whose liberty, safety, or job may be at stake and for whom justice may arrive too late, if at all. In some jurisdictions, civil litigants may well wait two to three years before going to trial. In jurisdictions with the most vacancies, it will often take far longer for published opinions to be issued, or courts will come to rely on more unpublished opinions. More worrisome still, because the Speedy Trial Act requires that courts give precedence to criminal cases, some backlogged courts have had to stop hearing civil cases altogether.

Overtaxed federal judges can't do justice at some point. Take, for instance, the federal court based in Denver, where five active judges are doing the work that ought to be done by seven. The Judicial Conference of the United States suggests the court needs another judgeship and has labeled the two vacancies a “judicial emergency” because the judges there each carry 593 instead of the 430 cases deemed optimal. Alliance for Justice today put out a new report on the jurisdictions designated as judicial emergencies. Among their findings: Judicial emergencies have more than doubled over the first 20 months of the Obama administration, and judicial emergencies now exist in 30 states. In many jurisdictions, judges who should have retired years ago are still actively hearing cases on courts that can't afford to lose even one more judge. This places unfair, undue pressure on every federal judge now sitting. Most judges have been stoic in the face of mounting work and caseloads. Few openly complain, lest they appear to be taking sides in the confirmation wars. Still the crisis is so urgent that some judges have begun to speak out: In May, Chief Judge Wiley Daniel of the U.S. District Court in Denver wrote to the majority and minority leaders in the Senate urging prompt confirmation and explaining that lingering vacancies impede public access to justice. Six highly regarded retired federal judges at the same time wrote to the senators that the current gridlock is not tenable for a nation “that believes in the rule of law.” In 1997 and again in 2001, Chief Justice William Rehnquist admonished the White House and Senate, then in control of opposite parties, to fill the many vacancies for the good of the nation. Imagine how you would feel if your heart surgeon had to perform thousands of surgeries each day. That's how worried you should be about federal judges forced to manage ever-expanding caseloads.

Potential judges won't agree to be nominated. Depending on who's doing the calculations, the average length of time between being nominated and confirmed has more than quadrupled in the Obama administration. As a result of procedural shenanigans in the Senate, nominees may remain in limbo for months, with careers and law practices stuck on hold as they await a vote that may never come. Indeed, 6th Circuit Judge Jane Stranch waited 13 months for a 71-21 vote, while Judge Albert Diaz, a 4th Circuit nominee, has waited nearly 11. As the wait for confirmation drags on ever longer, the best nominees will be inclined to start to wonder whether it's worth the bother. Many excellent potential nominees may not even entertain the prospect of judicial service anymore. As President Stephen Zack, presi-

dent of the American Bar Association, recently put it: “The current gridlock discourages anyone from subjecting themselves to the judicial nomination process.”

The more seats remain vacant, the greater the incentive to politicize the process. In the George W. Bush administration, the judicial-vacancy rate dropped to 4 percent. Now it's up to 10 percent again. The stakes become higher and higher as the opportunity to significantly reshape the federal bench becomes more real. The incentive for a Senate minority to obstruct nominees also grows with the vacancy rate. The party not in control of the White House invariably believes it will recapture the presidency in the next election and thus has the opportunity to appoint judges more to its liking. Accordingly, each nominee obstructed now is another vacancy reserved for the out-of-power party's president. These dynamics are evident with the midterm elections approaching: The process has now essentially shut down. That's why only one appellate nominee even received floor consideration between April 23 and Sept. 12 of this year.

The rampant politicization of the selection process is undermining public respect for the co-equal branches of government. President George W. Bush's use of the White House for a ceremony introducing his first 11 appellate nominees and his promotion of his judicial nominees exacerbated the sense that federal judgeships were a political prize for the winning party. Obama has attempted to depoliticize the confirmation process by naming judges generally regarded as centrist and moderate—much to the dismay of many liberals. But it has changed nothing. When the Senate confirmation process degenerates into cartoonish charges of judicial unfitness, name-calling, recriminations, and endless paybacks, the consequences go far beyond the legitimacy of Congress, to the legitimacy of the courts themselves. As courts are batted around for partisan political purposes, nominees and judges appear to be purely political actors—no different than members of Congress or the president. That doesn't just hurt judges. It hurts those of us who rely on judges to deliver just outcomes.

Americans watching the confirmation wars won't ultimately recall which president named which judge or what the final vote was. But they may begin to accept as normal an inaccurate and deeply politicized vision of judges as a bunch of alternating partisan hacks and a federal bench that is limping, rather than racing, to do justice.

## NATIONAL HOME CARE AND HOSPICE MONTH

Mr. WYDEN. Mr. President, our country strives to provide exceptional support for the sick, elderly and terminally ill in home and hospice settings. These vulnerable individuals, as well as their family caregivers, are indebted to the many professionals and volunteers who have made it their life's work to serve those in greatest need. Nearly 83,000 hospice professionals, 46,000 hospice volunteers and 1 million home health providers, nationally, contribute significantly to our health care system through their compassion and commitment.

Hospice care provides humane and comforting support for over 744,000 terminally ill patients and their families each year. These services include pain control, palliative medical care and social, emotional and spiritual services.

Hospice supports the basic human needs for feeling comfortable, in a familiar environment, surrounded by loving caregivers and family during the later stages of life. Hospice care is an effective model for the interaction of interdisciplinary teams of health professionals, family members and volunteers in providing care for those needing care in our communities.

The movement to provide health care and supportive services in the home environment has evolved rapidly over the past few decades. Home care services typically bring the expertise and compassion of providers in numerous disciplines into the setting where most sick patients prefer to reside—the home. More than 11 million Americans benefit each year from this approach.

We have made great strides in advancing care for all Americans through the recently enacted Affordable Care Act. A key provision in this effort is the establishment of a Medicare hospice concurrent care demonstration program, which would allow patients who are eligible for hospice care to also receive all other Medicare covered services during the same period of time. Following establishment of this program, I am hopeful that this country will move in a direction where individuals and families do not have to make the difficult choice between hospice and curative care in the Medicare Program.

On behalf of Oregon home health and hospice providers celebrating November as home care and hospice month, I thank the thousands of everyday heroes such as home health nurses, therapists, and aides, who work tirelessly to provide professional health and palliative care and support to millions of Americans in need of quality health services. Their efforts allow families to stay together, and provide greater comfort and dignity to those in our communities.

#### THE JOHN HANSON NATIONAL MEMORIAL ASSOCIATION

Mr. CARDIN. Mr. President, I wish to recognize a fellow Marylander, John Hanson, whose statue graces Statuary Hall here in the U.S. Capitol. George Washington is properly revered as the “Father of our Country” and the Nation’s first President. But we mustn’t overlook John Hanson’s seminal contributions to the birth of the United States. In October 1781, the British surrendered at Yorktown, VA, and the American Revolution was over. A month later, Hanson became the first elected President of the Continental Congress established under the Articles of Confederation. He was unanimously elected and served one term, from November 5, 1781 to November 3, 1782.

John Hanson’s administration began the task of creating the governmental infrastructure to meet the needs of a growing, diverse nation. Under his leadership, the Nation’s first central bank was created, along with the post

office, the departments of State, War and Treasury, the diplomatic corps, the national seal, and the annual observance of Thanksgiving Day. As the first elected President of our independent Nation, President Hanson began the task of unifying the former colonies and providing for their common defense, communication, and economic growth.

The John Hanson National Memorial Association now seeks to memorialize John Hanson and recognize his contributions to our Nation. The association proposes to create a national memorial on the Frederick County Courthouse courtyard, overlooking the site of the John Hanson House in Frederick, MD. Funds also will be raised to establish a public education program regarding President Hanson’s contributions to our democracy. Funding also will be used to support the John Hanson Institute, which would restore and preserve President Hanson’s first home, Mulberry Grove, on the banks of Port Tobacco River in Charles County, MD.

I ask my colleagues to join me in saluting the efforts of the association to recognize our first elected President, John Hanson of Maryland.

#### RECOGNIZING EUHOFA

Mr. REED. Mr. President, today I recognize and congratulate EUHOFA, an international association of hotel and hospitality schools, on the occasion of its 49th Congress, which was held in Providence, RI, from November 7 through November 12, 2010.

EUHOFA International was founded in Europe in 1955 with the mission of enhancing the quality of the training for the tourism industry throughout the world. Its members represent the world’s top hotel and hospitality colleges and universities in 45 countries. Representatives from 19 of these countries attended this year’s congress in Providence.

The 2010 EUHOFA Congress marks only the second time this event has taken place in the United States. This year, as in 1994, the EUHOFA Congress was hosted by Johnson & Wales University in Providence, which is home to one of our Nation’s premier hospitality schools.

The tourism industry is a vital part of my State and our Nation’s economy. Many people associate tourism solely with vacations. But at its heart, tourism provides an important bridge between countries and cultures, and at a time of great change, this kind of understanding is essential for our national security and economic recovery.

I am very proud that Rhode Island and Johnson & Wales University are hosting this great event. On behalf of the U.S. Senate, it is my pleasure to congratulate the 49th EUHOFA International World Congress.

#### TRIBUTE TO MARGOT ALLEN

Mr. ENSIGN. Mr. President, I am honored to rise today to pay tribute to Margot Allen, an exceptional employee, a dedicated patriot, an extraordinary woman, and a treasured friend, in celebration of her 70th birthday. Margot has been an invaluable part of my congressional team since our first campaign in 1994.

Raised in Alabama, Margot has the charm and grace of a true southern belle. Add to that her demand for precision and professionalism and her quick wit, and it explains why she has been known to elicit a, “Why, thank you!” from an obtuse obstructionist who has quite politely been told to “take a long walk off a short pier” in that captivating southern drawl.

Margot’s work on behalf of veterans and seniors in Nevada has earned her a stellar reputation as the authority among her peers and a miracle worker among those constituents who have benefited from her tenacious advocacy. She has gained the respect and admiration of those both in and out of government agencies with whom she collaborates. As a Regional Representative in my Las Vegas office, Margot has been a champion for Nevada’s servicemen and women, working tirelessly to resolve problems arising from bureaucracy or errors—often times being able to bring relief and hope to battle weary constituents. Her association with active duty and retirees from all branches of service coupled with her deep appreciation for the “Tradition of Honor and Legacy of Valor” has earned her profound admiration from privates and generals alike. At Nellis Air Force Base in Las Vegas, NV, the Commanding Officer of the 99th Airbase Wing is often referred to as the “Mayor of Nellis.” However, anybody who has been stationed at Nellis will definitely concede that it is Margot who is the mayor. She knows everybody and everybody knows her.

Her passion for accuracy in grammar and written composition took her to the University of Alabama where she worked as a professor. Margot also taught English language skills to Panamanians while she and her beloved husband Leonard were living in Panama where he worked for the Department of Defense. Her love of the English language and her commitment to scholarship has not only served her well over the years but also become an unequalled resource for my staff and me. Margot provides the final inspection for every document that is sent from any of my offices. She calmly, methodically, and repeatedly teaches the placement of commas, patiently explains when healthcare is one word or two, and has been known to ask staff on more than one occasion, “Honey, why don’t you just tell me what you meant to say.”

I am very privileged as a United States Senator to work with a team of highly skilled, capable, and dedicated staff members who are committed to