first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Afghanistan. And though his fate on the battlefield was uncertain, he pushed forward, protecting America's citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Specialist Kridlo will forever be remembered as one of our country's bravest.

To Specialist Kridlo's entire family—I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by your pride in Dale's service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

SECOND LIEUTENANT ROBERT M. KELLY

Mr. VITTER. Mr. President, today I recognize Second Lieutenant Robert M. Kelly of Tallahassee, FL, who was killed November 9, 2010, from an improvised explosive device while on a foot patrol in Helmand Province, Afghanistan. Lieutenant Kelly is survived by his wife Heather, his sister Kathleen, and his brother John Kelly, who is also a marine. LT Robert Kelly was the son of Lieutenant General Kelly and Mrs. John Kelly. Lieutenant General Kelly is the commander of the Marine Forces Reserve in New Orleans.

Lieutenant Kelly was engaged in his third combat deployment and was assigned to the 3rd Battalion, 5th Marine Regiment, 1st Marine Division out of Camp Pendleton, CA. Following in his father's footsteps, Lieutenant Robert Kelly rose through the ranks during his service. He was commissioned as an officer in the Marine Corps on December 12, 2008, where he continued to honorably serve with distinction.

A decorated marine, LT Robert Kelly's bravery is a testament to true American heroism. Having received multiple awards that include the Purple Heart, Combat Action Ribbon, Navy and Marine Corps Achievement Medal, Iraq Campaign Medal, and Afghanistan Campaign Medal, Lt. Kelly deserves to be recognized. He also received the Marine Corps Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Medal, Global War on Terrorism Expeditionary Medal, Humanitarian Service Medal, and the Sea Service Deployment Ribbon.

There is no doubt that this tragic loss will not only be felt within the Kelly family but also the Marine Corps and this Nation. Our thoughts and prayers will continue to be with his family and friends. Today I ask my colleagues to join me in honoring and remembering 2LT Robert M. Kelly, who made the ultimate sacrifice for our Nation.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, in the aftermath of the November election returns, there was talk on all sides about working together. We can do so right now, without further delay, and in the interests of the American people. As of today there are more than 100 vacancies on the Federal courts around the country, 50 of them for vacancies deemed judicial emergencies by the Administrative Office of the U.S. Courts. The Senate has ready for consideration and confirmation 23 judicial nominees of the President, all of whom have had hearings before the Judiciary Committee and have been reported favorably to the Senate by a majority of that committee. Sixteen of these judicial nominees were reported unanimously. The Senate can confirm those 16 nominees today, and we can then schedule such debate as needed on the remaining seven. Our working together to do so would send the right message to the American people. Let's work together and approve these nominations without additional delay. Let's end the gridlock. Let's move forward.

As the Senate recessed for the elections, we were not allowed to consider and confirm any of the 23 judicial nominations pending on the Senate Executive Calendar—this despite the judicial vacancies crisis in our Federal courts. As of today there are 108 current judicial vacancies. We already know of 20 future vacancies. In addition, the Senate has not acted on the request by the Judicial Conference of the United States to authorize 56 additional judges, which will allow the Federal judiciary to do its work. Accordingly, the Federal judiciary is currently more than 180 judges short of those needed.

At the end of September, the President of the United States sent a letter to Senate leaders expressing his justifiable concern with the pace of judicial confirmations. The President wrote that the American people and the Federal judiciary suffer from this inaction and that a minority of Senators has, in his words ''systematically and irresponsibly used procedural maneuvers to block or delay confirmation votes on judicial nominees—including nominees that have strong bipartisan support and the most distinguished records.''

All of these nominees have the backing of their home State Senators. Indeed, President Obama has worked hard with home State Senators regardless of party affiliation, and by so doing has done his part to restore comity to the process.

Sixteen judicial nominees have been delayed despite the fact that they were reported without a single vote in opposition from the Senate Judiciary Committee. Regrettably, despite the President's efforts and his selection of outstanding nominees the Senate has not reciprocated by promptly considering his consensus nominees. To the contrary, as the President has pointed out, nominees are being stalled who, if allowed to be considered, would receive unanimous or near unanimous support, be confirmed, and be serving in the administration of justice throughout the country. This is counterproductive.

Like the President, I welcome debate and a vote on those few nominees that some Republican Senators would oppose. Nominees like Benita Pearson of Ohio, William Martinez of Colorado, Louis Butler of Wisconsin, Edward Chen of California, John McConnell of Rhode Island, Goodwin Liu of California and Robert Chatigny of Connecticut. I have reviewed their records and considered their character, background and qualifications. I have heard the criticisms of the Republican Senators on the Judiciary Committee as they have voted against this handful of nominees. I disagree, and believe the Senate would vote, as I have, to confirm them. That they will not be conservative activist judges should not disqualify them from serving.

But that is not what is happening. We are not debating the merits of those nominations, as Democratic Senators did when we opposed the most extreme handful of nominees of President Bush. What is happening is that judicial confirmations are being stalled virtually across the board. What is new and particularly damaging is that 16 judicial nominees who were all reported unanimously by the Senate Judiciary Committee, without Republican opposition, are still being delayed. These nominees include Albert Diaz and Catherine Eagles of North Carolina. They are both supported by Senator HAGAN and Senator BURR. Sadly, Senator BURR's support has not freed them from the across the board Republican hold on all judicial nominees. Judge Diaz was reported unanimously in January, almost 11 months ago, and still waits for agreement from the minority in order for the Senate to consider his nomination so that he may be confirmed.

Also being delayed for no good reason from joining the bench of the most overloaded Federal district in the country in the Eastern District of California is Kimberly Mueller, whose nomination was reported last May, more than 6 months ago, without any opposition. Her nomination is one of four circuit and district nominations to positions in the Ninth Circuit currently on the Executive Calendar that Republicans are blocking from Senate consideration. In addition to the Liu and Chen nominations, the nomination of Mary Murguia from Arizona to the Ninth Circuit has been stalled since August despite the strong support of Senator KYL, the assistant Republican leader.

I want to put into the RECORD a letter we received this week from Ninth Circuit Chief Judge Alex Kozinski, a President Reagan appointee, and the other members of the Judicial Council of the Ninth Circuit writing ''to emphasize our desperate need for judges'' in the Nation's largest Federal circuit. They write that ''[c]ourts cannot do their work if authorized judicial positions remain vacant'' and urge ''that the Senate act on judicial nominees

without delay.'' This letter echoes the serious warning I have previously spoken about issued by Justice Anthony Kennedy at the Ninth Circuit Conference about skyrocketing judicial vacancies in California and throughout the country. He said: ''It's important for the public to understand that the excellence of the federal judiciary is at risk.'' He noted that ''if judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled.''

The District of Columbia suffers from four vacancies on its Federal District Court. Two nominees could help that court, but they are now being delayed from final consideration. Beryl Howell was reported by the committee unanimously. She is well known to many of us from her 10 years of service as a counsel on the Senate Judiciary Committee. She is a decorated former Federal prosecutor and the child of a military family. Robert Wilkins was also reported without opposition. The distinguished Chief Judge of the District Court, Chief Judge Royce Lamberth sent a recent letter to Senate leaders urging prompt action on these nominations.

John Gibney of Virginia, James Bredar and Ellen Hollander of Maryland, Susan Nelson of Minnesota, Edmond Chang of Illinois, Leslie Kobayashi of Hawaii, and Denise Casper of Massachusetts are the other district court nominees reported unanimously from the Judiciary Committee and could have been confirmed as consensus nominees long ago.

Another district court nominee is Carlton Reeves of Mississippi, who is supported by Senator COCHRAN and is a former president of the Magnolia Bar Association. Only Senator COBURN asked to be recorded as opposing his nomination. I believe Mr. Reeves would receive a strong bipartisan majority vote for confirmation.

Counting Judge Diaz, there are five consensus nominees to the circuit courts who are being stalled. Judge Ray Lohier of New York would fill one of the four current vacancies on the United States Court of Appeals for the Second Circuit. He is another former prosecutor with support from both sides of the aisle. His confirmation has been stalled for no good reason for more than 6 months, as well. Scott Matheson is a Utah nominee with the support of Senator HATCH who was reported without opposition. Mary Murgaia is from Arizona and is supported by Senator KYL and was reported without opposition. Finally, Judge Kathleen O'Malley of Ohio, nominated to the Federal circuit, was reported without opposition.

Many of these nominees could have been considered and confirmed before the August recess. All of them could have been considered and confirmed before the October recess. They were not. They were not because of Republican objections that, I suspect, have nothing to do with the qualifications or quality of these nominees. These are not judicial nominations whose judicial philosophy Republicans question.

The President noted in his September letter to Senate leaders that the ''real harm of this political game-playing falls on the American people, who turn to the courts for justice'' and that the unnecessary delay in considering these noncontroversial nominations ''is undermining the ability of our courts to deliver justice to those in need . . . from working mothers seeking timely compensation for their employment discrimination claims to communities hoping for swift punishment for perpetrators of crimes to small business owners seeking protection from unfair and anticompetitive practices.''

President Obama has reached out to Republican home State Senators regarding his judicial nominations. They should reciprocate. As the President said in his inaugural address calling for a new era of responsibility, he called for ''an end to the petty grievances . . . recriminations and worn-out dogmas that for far too long have strangled our politics.'' The President recalled the words of Scripture as he urged ''the time has come to set aside childish things.'' Let the Senate end this across the board blockade against confirming noncontroversial judicial nominees. Democrats did not engage in such a practice with President Bush and Republicans should not continue their practice any longer. With more than 100 vacancies plaguing the Federal courts, we do not have the luxury of indulging in such games.

The Senate is well behind the pace set by a Democratic majority in the Senate considering President Bush's nominations during his first 2 years in office. By this date in President Bush's second year in office, the Senate, with a Democratic majority, had confirmed 100 of his Federal circuit and district court nominations. They were all considered and confirmed during the 17 months I chaired the Senate Judiciary Committee. Not a single nominee reported by the Judiciary Committee remained pending on the Senate's Executive Calendar at the end of the Congress.

In sharp contrast, during President Obama's first 2 years in office, the minority has allowed only 41 Federal circuit and district court nominees to be considered by the Senate. In 2002, we proceeded in the lame duck session after the election to confirm 20 of President Bush's judicial nominees. This year there are 23 judicial nominations ready for Senate consideration and another 11 noncontroversial nominations on the committee's business agenda that could have been reported out yesterday. Those 11 nominations were needlessly held over another two weeks by Republican Senators but could be reported to the Senate at our next business meeting. That is more than 30 additional confirmations that could be easily achieved with a little cooperation from the minority. That would increase the confirmations from the historically low level of 41, where it currently stands, to between 70 and 75. That would be in the range of judicial confirmations during President George H.W. Bush's first 2 years, 70, while resting far below President Reagan's first 2 years, 87, and pale in comparison to the 100 confirmed in the first 2 years of the George W. Bush administration or those confirmed during President Clinton's first 2 years, 127.

I come before the Senate today to make a proposal to end this impasse. This is a proposal the American people will understand and, I believe, support. It, too, has scriptural roots. I ask the Republican leadership to follow the Golden Rule with respect to these judicial nominations. This is not complicated. It is something we teach our children from a young age. It is a basic rule of good behavior. Do unto these nominations as you would have done to the nominations of a Republican President. Following this basic precept would lead to the confirmation without further delay of the nominations reported without opposition. They can be confirmed today. If someone wishes to ask for rollcall votes on these nominations, tell the majority leader so that he can schedule that vote without further delay. End this across the board stall on judicial nominations by allowing the many noncontroversial nominations to proceed without further objection, obstruction or delay.

The new tactic of objecting to consideration of noncontroversial nominations is an escalation of the so-called ''judge wars.'' The attempted justification as some kind of tit-for-tat is wrong. But my proposal does not depend on whether you agree with me or side with partisans from across the aisle. While seeking to justify ''an eye for an eye'' would require a look back and a factual accounting, the Golden Rule is a rule of current and prospective behavior. I hope those on the other side will remember our shared values and adopt the Golden Rule going forward from this day. That would be a step toward returning to our Senate traditions and allow the Senate better to fulfill its responsibilities to the American people and the Federal judiciary.

During these 17 months I chaired the Judiciary Committee during President Bush's first 2 years, I scheduled 26 hearings for the judicial nominees of a Republican President and the Judiciary Committee worked diligently to consider them. During the 2 years of the Obama administration, I have tried to maintain that same approach. The committee held its 25th hearing for President Obama's Federal circuit and district court nominees this week. I have not altered my approach and neither have Senate Democrats.

One thing that has changed is that we now receive the paperwork on the nominations, the nominee's completed questionnaire, the confidential background investigation and the American

Bar Association, ABA, peer review almost immediately after a nomination is made, allowing us to proceed to hearings more quickly. During 2001 and 2002, President Bush abandoned the procedure that President Eisenhower had adopted and that had been used by President George H.W. Bush, President Reagan and all Presidents for more than 50 years. Instead, President George W. Bush delayed the start of the ABA peer review process until after the nomination was sent to the Senate. That added weeks and months to the timeline in which hearings were able to be scheduled on nominations.

When I became chairman of the Judiciary Committee midway through President Bush's first tumultuous year in office, I worked very hard to make sure Senate Democrats did not perpetuate the ''judge wars'' as tit-for-tat. Despite the fact that Senate Republicans pocket filibustered more than 60 of President Clinton's judicial nominations and refused to proceed on them while judicial vacancies skyrocketed during the Clinton administration, in 2001 and 2002, during the 17 months I chaired the committee during President Bush's first two years in office, the Senate proceeded to confirm 100 of his judicial nominees.

By refusing to proceed on President Clinton's nominations while judicial vacancies skyrocketed during the 6 years they controlled the pace of nominations, Senate Republicans allowed vacancies to rise to more than 110 by the end of the Clinton administration. As a result of their strategy, Federal circuit court vacancies doubled. When Democrats regained the Senate majority halfway into President Bush's first year in office, we turned away from these bad practices. As a result, overall judicial vacancies were reduced during the Bush years from more than 10 percent to less than four percent. During the Bush years, the Federal court vacancies were reduced from 110 to 34 and Federal circuit court vacancies were reduced from a high of 32 down to single digits.

This progress has not continued with a Democratic President back in office. Instead, Senate Republicans have returned to the strategy they used during the Clinton administration of blocking the nominations of a Democratic President, again leading to skyrocketing vacancies. Last year the Senate confirmed only 12 Federal circuit and district court judges, the lowest total in 50 years. This year we have yet to confirm 30 Federal circuit and district judges. We are not even keeping up with retirements and attrition. As a result, judicial vacancies are, again, over 100 and, again, more than 10 percent.

Regrettably, the Senate is not being allowed to consider the consensus, mainstream judicial nominees favorably reported from the Judiciary Committee. It has taken nearly five times as long to consider President Obama's judicial nominations as it did to consider President Bush's during his first 2 years in office. During the first 2 years of the Bush administration, the 100 judges confirmed were considered by the Senate an average of 25 days from being reported by the Judiciary Committee. The average time for confirmed circuit court nominees was 26 days. By contrast, the average time for the 41 Federal circuit and district and circuit court judges confirmed since President Obama took office is 90 days and the average time for circuit nominees is 148 days—and that disparity is increasing.

This vacancies crisis alarms the President of the United States. It alarms Supreme Court Justices. It alarms the Federal Bar Association. It alarms the American Bar Association. I ask unanimous consent that the President's September 30 letter, Chief Judge Lamberth's November 4 letter, and statements by the Federal Bar Association and American Bar Association be printed in the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. LEAHY. There is no good reason to hold up consideration for weeks and months of nominees reported without opposition from the Judiciary Committee. I have been urging since last year that these consensus nominees be considered promptly and confirmed. If Senators would follow the Golden Rule, that would happen without further delay.

I ask unanimous consent that the Judicial Council letter be printed in the RECORD.

There being no objection the material was orderd to be printed in the RECORD, as follows:

NOVEMBER 15, 2010.

Hon. HARRY REID,
Majority Leader,
U.S. Senate, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader,
U.S. Senate, Washington, DC.
Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee,
U.S. Senate, Washington, DC.
Hon. JEFF SESSIONS,
Ranking Member, Senate Judiciary Committee,
U.S. Senate, Washington, DC.

GENTLEMEN: We write on behalf of the courts of the Ninth Circuit. As you know, the Ninth Circuit is by far the largest federal circuit in the country, encompassing the 9 western states, plus the territory of Guam and the Commonwealth of the Northern Mariana Islands. Approximately one fifth of the population of the United States lives within the borders of the Ninth Circuit. Our caseload reflects the diversity of our territory and the people that inhabit it and is heavily impacted by increased immigration enforcement, drug interdiction activities, prison litigation, bankruptcy and environmental cases—to name just a few of the most active areas.

In order to do our work, and serve the public as Congress expects us to serve it, we need the resources to carry out our mission. While there are many areas of serious need, we write today to emphasize our desperate need for judges. Our need in that regard has been amply documented (See attached March 2009 Judicial Conference Recommendations for Additional Judgeships). Courts cannot do their work if authorized judicial positions remain vacant.

While we could certainly use more judges, and hope that Congress will soon approve the additional judgeships requested by the Judicial Conference, we would be greatly assisted if our judicial vacancies—some of which have been open for several years and declared ''judicial emergencies''—were to be filled promptly. We respectfully request that the Senate act on judicial nominees without delay.

Sincerely,

Alex Kozinski, Chief Judge, Ninth Circuit;
Sidney R. Thomas, Circuit Judge, Ninth Circuit;
Ronald M. Gould, Circuit Judge, Ninth Circuit;
Audrey B. Collins, Chief Judge, Central District of California;
Vaughn R. Walker, Chief Judge, Northern District of California;
Procter Hug, Jr., Senior Judge, Ninth Circuit;
Raymond C. Fisher, Circuit Judge, Ninth Circuit;
Johnnie B. Rawlinson, Circuit Judge, Ninth Circuit;
Roger L. Hunt, Chief Judge, District of Nevada;
Robert H. Whaley, Senior Judge, Eastern District of Washington.

CHIEF JUDGES, U.S. DISTRICT COURTS OF THE NINTH CIRCUIT

Ralph R. Beistline, Chief Judge, District of Alaska;
Irma E. Gonzalez, Chief Judge, Southern District of California;
Susan Oki Mollway, Chief Judge, District of Hawaii;
Richard F. Cebull, Chief Judge, District of Montana;
Lonny R. Suko, Chief Judge, Eastern District of Washington;
Anthony W. Ishii, Chief Judge, Eastern District of California;
Frances Marie Tydingco-Gatewood, Chief Judge, District of Guam;
B. Lynn Winmill, Chief Judge, District of Idaho;
Ann L. Aiken, Chief Judge, District of Oregon;
Robert S. Lasnik, Chief Judge, Western District of Washington.

EXHIBIT 1

THE WHITE HOUSE,
Washington, DC, September 30, 2010.

Hon. HARRY REID,
Majority Leader,
U.S. Senate, Washington, DC.
Hon. PATRICK J. LEAHY,
Chairman, Judiciary Committee,
U.S. Senate, Washington, DC.
Hon. MITCH MCCONNELL,
Republican Leader,
U.S. Senate, Washington, DC.
Hon. JEFF SESSIONS,
Ranking Member, Judiciary Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR REID, SENATOR MCCONNELL, SENATOR LEAHY, AND SENATOR SESSIONS: I write to express my concern with the pace of judicial confirmations in the United States Senate. Yesterday, the Senate recessed without confirming a single one of the 23 Federal judicial nominations pending on the Executive Calendar. The Federal judiciary and the American people it serves suffer the most from this unprecedented obstruction. One in eight seats on the Federal bench sits empty, and the Administrative Office of the U.S. Courts has declared that many of those vacancies constitute judicial emergencies. Despite the urgent and pressing need to fill

these important posts, a minority of Senators has systematically and irresponsibly used procedural maneuvers to block or delay confirmation votes on judicial nominees—including nominees that have strong bipartisan support and the most distinguished records. The minority has even been blocking non-controversial nominees—a dramatic shift from past practice that could cause a crisis in the judiciary.

The Judiciary Committee has promptly considered my judicial nominees. Nonetheless, judicial confirmation rates in this Congress have reached an all-time low. At this point in the prior Administration (107th Congress), the Senate had confirmed 61% of the President's judicial nominations. By contrast, the Senate has confirmed less than half of the judicial nominees it has received in my Administration. Nominees in the 107th Congress waited less than a month on the floor of the Senate before a vote on their confirmation. The men and women whom I have nominated who have been confirmed to the Courts of Appeals waited five times longer and those confirmed to the District Courts waited three times longer for final votes.

Right now, 23 judicial nominees await simple up-or-down votes. All of these nominees have the strongest backing from their home-state Senators—a fact that usually counsels in favor of swift confirmation, rather than delay. Sixteen of those men and women received unanimous support in the Judiciary Committee. Nearly half of the nominees on the floor were selected for seats that have gone without judges for anywhere between 200 and 1,600 days. But despite these compelling circumstances, and the distinguished careers led by these candidates, these nominations have been blocked.

Judge Albert Diaz, the well-respected state court judge I nominated to the U.S. Court of Appeals for the Fourth Circuit, has waited 245 days for an up-or-down vote—more than 8 months. Before becoming a judge, Diaz served for over 10 years in the United States Marine Corps as an attorney and military judge. If confirmed, he would be the first Hispanic to sit on the Fourth Circuit. The seat to which he was nominated has been declared a judicial emergency. Judge Diaz has the strong support of both of North Carolina's Senators. Senator Burr has publicly advocated for Judge Diaz to get a final vote by the Senate. And just before the August recess, Senator Hagan went to the floor of the Senate to ask for an up-or-down vote for Judge Diaz. Her request was denied.

We are seeing in this case what we have seen in all too many others: resistance to highly qualified candidates who, if put to a vote, would be unanimously confirmed, or confirmed with virtually no opposition. For example, Judge Beverly Martin waited 132 days for a floor vote—despite being strongly backed by both of Georgia's Republican Senators. When the Senate finally held a vote, she was confirmed to the Eleventh Circuit unanimously. Jane Stanch was recently confirmed by an overwhelming majority of the Senate, after waiting almost 300 days for a final vote. Even District Court nominees have waited 3 or more months for confirmation votes—only to be confirmed unanimously.

Proceeding this way will put our judiciary on a dangerous course, as the Department of Justice projects that fully half of the Federal judiciary will be vacant by 2020 if we continue on the current pace of judicial confirmations. The real harm of this political game-playing falls on the American people, who turn to the courts for justice. By denying these nominees a simple up-or-down vote, the Republican leadership is undermining the ability of our courts to deliver justice to those in need. All Americans depend on having well-qualified men and women on the bench to resolve important legal matters—from working mothers seeking timely compensation for their employment discrimination claims to communities hoping for swift punishment for perpetrators of crimes to small business owners seeking protection from unfair and anticompetitive practices.

As a former Senator, I have the greatest respect for the Senate's role in providing advice and consent on judicial nominations. If there is a genuine concern about the qualifications of judicial nominees, that is a debate I welcome. But the consistent refusal to move promptly to have that debate, or to confirm even those nominees with broad, bipartisan support, does a disservice to the greatest traditions of this body and the American people it serves. In the 107th Congress, the Judiciary Committee reported 100 judicial nominees, and all of them were confirmed by the Senate before the end of that Congress. I urge the Senate to similarly consider and confirm my judicial nominees.

Sincerely,

BARACK OBAMA.

U.S. DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA,
Washington, DC, November 4, 2010.

Re: Judicial Vacancies—United States District Court for the District of Columbia.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
The Capitol, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
The Capitol, Washington, DC.

DEAR SENATOR REID AND SENATOR MCCONNELL: On behalf of the judges of the United States District Court for the District of Columbia, I request that the Senate act soon to fill the vacancies that exist at our Court.

Of our 15 authorized judgeships, we currently have four vacancies. One has been vacant since January 2007. With the additional vacancy that will result from Judge Ricardo M. Urbina's assumption of senior status, effective January 31, 2011, this Court faces the prospect of having only 10 of its 15 authorized judgeships filled. The severe impact of this situation already is being felt and will only increase over time. The challenging caseload that our Court regularly handles includes many involving national security issues, as well as other issues of national significance. A large number of these complex, high-profile cases demand significant time and attention from each of our judges.

Without a complement of new judges, it is difficult to foresee how our remaining active judges will be able to keep up with the heavy volume of cases that faces us. A 33 percent vacancy ratio is quite extraordinary.

Two nominees (Beryl Howell and Robert Wilkins) have been reported out of the Senate Judiciary Committee and await floor votes; two nominees (James Boasberg and Amy Jackson) have had their hearings and hopefully will soon be reported out of Committee.

We hope the Senate will act quickly to fill this Court's vacancies so the citizens of the District of Columbia and the Federal Government and other litigants who appear before us continue to enjoy the high quality of justice they deserve.

Sincerely,

ROYCE C. LAMBERTH,
Chief Judge.

AMERICAN BAR ASSOCIATION,
Chicago, IL, August 5, 2010.

Hon. BARACK OBAMA,
President of the United States of America,
The White House, Washington, DC.
Hon. HARRY REID,
Majority Leader,
U.S. Senate, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader,
U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Chair, Senate Judiciary Committee,
U.S. Senate, Washington, DC.
Hon. JEFF SESSIONS,
Ranking Member, Senate Judiciary Committee,
U.S. Senate, Washington, DC.

DEAR PRESIDENT OBAMA, MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN LEAHY, AND SENATOR SESSIONS: Now that the Senate has concluded another historic debate and vote on a nominee to the U.S. Supreme Court and is about to recess for its summer break, I am writing to express the American Bar Association's mounting concern over the persistently high number of judicial vacancies on our federal district courts and courts of appeals. I urge you, upon your return to Washington in September, to make the filling of judicial vacancies a priority for the Administration and for the Senate. As lawyers who represent our clients in federal courts across this nation, members of the American Bar Association know first hand that longstanding vacancies and protracted delays in the nomination and confirmation process do great harm to the federal judiciary and to public life.

Despite the confirmation of 37 Article III judges during the 111th Congress, the vacancy rate has not dropped below 10 percent since last August. For the past six months, the vacancy rate has remained at over 11 percent, and the number of vacancies has hovered around the 100 mark. The lack of progress in reducing the vacancy rate this session is especially worrisome in light of the number of judges who have reached, or are fast approaching, retirement age: eighteen judges have announced their intention to retire in the next year, and several additional vacancies will no doubt arise as a result of judicial elevations, deaths and resignations. If the nomination and confirmation process does not speed up significantly, confirmations will not even keep pace with the rate of attrition. The high number of vacancies, combined with the low number of confirmations, has created a problem that is fast approaching crisis proportions.

Vacancies have different effects on different courts. Those courts with relatively normal caseloads per judgeship and a sufficient number of active judges may be able to absorb the extra workload and operate normally if vacancies are filled within a reasonable time. In contrast, courts that already are operating with staggering caseloads and too few authorized judgeships are strained beyond capacity by unfilled vacancies and are unable to keep up with the workload.

In these jurisdictions, persistent vacancies make it impossible for the remaining judges on the court to give each case the time it deserves; community and business life suffers because shorthanded courts have no choice but to delay civil trial dockets due to the Speedy Trial Act; and courts are forced to adopt time-saving procedures, some of which may serve efficiency at the price of altering the delivery and quality of justice over time in ways not intended. The harm caused by persistent vacancies on these courts may reach into the future, too: if no abatement of these conditions is in sight, the specter of this kind of work environment is likely to result in additional judicial retirements and resignations and deter excellent attorneys from seeking positions on the federal bench.

Lawyers who practice regularly in the federal courts and their clients who expect timely judicial resolution of their disputes are deeply concerned that the partisanship that has long characterized the process and the persistently high number of vacancies are creating strains that will inevitably reduce the quality of our justice system and erode public confidence in the independence and impartiality of our federal courts. This is a result we, as a nation, can ill-afford: all three branches must be robust and strong to advance the important work of government.

We urge you to take immediate action to avert a potential crisis and preserve the quality and vitality of the federal judiciary, and we offer the following suggestions:

1. The President and the Senate should make the prompt filling of federal judicial vacancies a priority. Each party to the process should commit sufficient time and resources to the endeavor, and resolve to work cooperatively and across the political aisle to reduce the vacancy rate as quickly as possible. A commitment should be made to cultivate a process that is dominated by common purpose and a spirit of mutual respect and bipartisan cooperation.

Politics and bipartisanship are not mutually exclusive. Even though the judicial nomination and confirmation process is political by design and gives each branch an opportunity to exercise a check on the quality of the federal bench, it should not serve as a battleground for other political disputes. A renewed spirit of bipartisanship is essential to reducing the backlog of vacancies and improving the process.

2. The Administration should make a concerted effort to shorten the time between vacancy and nomination and to submit a nomination to the Senate for every outstanding Article III judicial vacancy. The Administration should make a special effort to act with due diligence to nominate individuals to the vacant judicial seats that the Administrative Office of the United States Courts has classified as ''judicial emergencies'' (42 now exist), based on a combination of the length of time the seat has been vacant and the number of weighted or adjusted case filings for that seat.

We commend the Administration for its commitment to engage in meaningful prenomination consultation with home-state senators, a concept that the ABA endorsed in 2007 as a means to reduce partisanship. As a result, many nominations have had the backing of both home-state senators, regardless of party affiliation. Unfortunately, even though prenomination consultation has increased bipartisan accord during the initial phases of the process, it has not insulated nominees from partisan politics on the Senate floor: senators have blocked or delayed the consideration of numerous nominees who have the support of their home-state senators as well as the overwhelming support of the Senate Judiciary Committee.

3. The Senate should give every nominee an up-or-down vote within a reasonable time after the nomination is reported by the Senate Judiciary Committee.

Dilatory tactics have been used repeatedly to stall Senate floor consideration of judicial nominees, starting with the first nomination to reach the floor for a vote. Even though the Senate has confirmed 25 nominees this session, the Senate Judiciary Committee has reported out nominees far faster than the Senate has scheduled votes. As a result, the backlog of nominees awaiting floor action has steadily increased over the course of the session.

Twelve of the 21 nominees currently awaiting floor consideration were approved by unanimous consent, unanimous vote, or voice vote of the committee; two were approved with little dissent, and only seven received significant opposition. That almost two-thirds of them had no or little opposition in committee, combined with the fact that many prior nominees subjected to delayed floor consideration ultimately were confirmed by unanimous or almost unanimous vote, strongly suggests that the failure to schedule timely floor votes on many pending nominees has little or nothing to do with their qualifications.

Tactics to delay votes on nominees that are launched for reasons not associated with their qualifications blatantly inject politics into the process. Such tactics waste the time of the Senate and increase the time a nominee is in limbo. Worst of all, they needlessly deprive the federal courts of the judges they sorely need.

Senate leaders should seek to avoid scheduling delays over nominees who have bipartisan support and should discourage and dissuade their colleagues from using the judicial confirmation process to advance or defeat other legislative objectives. If legitimate concerns are raised over a nominee's qualifications for a lifetime appointment to the federal bench, sufficient time should be scheduled to permit the Senate to engage in full debate. The objective should not be to rush consideration of nominees whose qualifications are questioned, but to assure timely consideration of every judicial nominee whose nomination has been approved by the Senate Judiciary Committee and forwarded to the Senate for a confirmation vote.

We urge all members of the Senate to remain cognizant of the central importance of a fully staffed federal judiciary and to make an effort to reach across the aisle to try to find constructive ways to support the judiciary and protect it from excessive political zeal. We believe that a true respect for the importance of the federal courts will best inform each senator's decision with regard to action on pending judicial nominations.

Our judicial system is predicated on the principles that each case deserves to be evaluated on its merits, that justice will be dispensed even-handedly, and that justice delayed is justice denied. There may be disagreements with individual decisions rendered by the federal courts, but few would dispute their essential role in our system of government and their impact on daily life. Congress should take action to support, not undermine, the vital work of the federal courts.

We urge the President and the Senate to take all necessary steps to fill existing vacancies promptly and to restore bipartisan accord to the nomination and confirmation process so that the federal courts will not be deprived of the judges they need to do their important work.

Sincerely,

CAROLYN B. LAMM,
President.

[From the Washington Watch, Oct. 2010]

OCTOBER 201: VACANCY SIGNS AT THE FEDERAL COURTHOUSE

(By Bruce Moyer)

The federal judicial confirmation process is at one of its most dysfunctional junctures in American history, and its failure to move nominees has brought about a vacancy crisis in our federal courts. This is not a partisan issue with shades of black and white; the breakdown in the Senate owes itself as much to one party as the other. This is a national issue that speaks to the country's declining appreciation for its courts, the increasing corrosiveness of our politics, and the rising abuse in the Senate of its procedures.

As the Senate departed Washington on Sept. 30 for a six-week election recess, 103 federal Article III judgeships stood vacant, equaling nearly one out of every eight federal judgeships. The Judicial Conference says that 48 of these vacant judgeships constitute ''judicial emergencies,'' meaning they have been vacant for at least 18 months and are in districts or circuits dealing with pressing caseloads.

Judicial vacancies are harmful. They prevent the courts from operating at their full capacity in dispensing fair, prompt justice. Vacancies mean larger dockets, longer delay, and greater pressure and expense for lawyers and litigants. As Slate legal columnists Dahlia Lithwick and Carl Tobias recently commented, ''Crowded dockets mean longer waits for cases to be heard promptly. This affects 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.'' Justice Anthony Kennedy said it best, in comments to the Los Angeles Times: ''It'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.''

Under the Constitution, the U.S. Senate is the sole entity charged with the responsibility to ''advise and consent'' upon the President's appointment of judges. Despite the Founders' straightforward wishes, the judicial confirmation process has grown distorted before our very eyes. Over the past 30 years, the Senate has increasingly stonewalled or rejected the President's judicial nominees, regardless of party. Confirmation rates at 18 months into a presidency have fallen from the high-water mark set in 1982 by President Reagan (93 percent) to 47 percent today (the percentage of President Obama's nominees who have won Senate confirmation). These numbers—along with opaque, obstructionist ''secret holds'' on nominations and unprecedented use of the filibuster—reflect a process more like ''Advice & Dissent,'' the apt title of Sarah Binder and Forrest Maltzman's recent work on the struggle to shape the federal judiciary.

Finger pointing by the two main U.S. political parties is in overdrive over how the process has devolved and who is at fault. If the confirmation wars expand and increase, regardless of which party takes control of the Senate, the implications for the future are even more troubling. In August, Assistant Attorney General Christopher H. Schroeder warned an audience of Ninth Circuit judges and lawyers that if the current rate of replacing retired, resigned, and deceased judges continues, nearly half of the 875 federal judgeships could be vacant by the end of the decade.

When the Senate left Washington for its election recess, it abandoned its responsibility to provide an up-or-down vote on 16 federal judicial nominees—all of whom were favorably approved by the Senate Judiciary Committee with strong bipartisan support. One nominee, Albert Diaz, who would be the first Hispanic judge on the U.S. Circuit Court of Appeals for the Fourth Circuit, has waited the longest: the Senate Judiciary Committee favorably reported his nomination to the Senate back in January.

The Federal Bar Association's mission is to promote the effective crafting and administration of justice and jurisprudence in our federal courts. That cannot happen if judgeships remain vacant at current levels. Over the past year, the FBA has called upon Senate leaders of both parties to hasten their work on judicial confirmations to assure that nominees who have been favorably reported out of the Senate Judiciary Committee are assured of a prompt up-or-down vote in the Senate. The association also has

encouraged the President to promptly nominate qualified nominees with dispatch. FBA chapters in districts and circuits with pending judicial nominees have contacted their home-state senators to urge a prompt vote on their nominees. This advocacy must continue.

Will the FBA help to make a difference? If the FBA doesn't raise its voice, who will?

CONVICTION OF BAHA'I LEADERS

Mrs. FEINSTEIN. Mr. President, today I wish to express my concern about the detention of seven leading members of the Baha'i community in Iran: Mahvash Sabet, Fariba Kamalabadi, Jamaloddin Khanjani, Afif Naeimi, Saeid Rezaie, Behrouz Tavakkoli, and Vahid Tizfahm.

The seven leaders were arrested in 2008 and accused of espionage and propaganda against the state. In June, the Iranian Government sentenced them to 20 years in prison, a sentence which was subsequently reduced to 10 years.

The State Department, the U.N. High Commissioner for Refugees, and leading human rights organizations like Amnesty International and Human Rights Watch have all expressed concern about the harsh sentence and the lack of due process in these cases.

The seven Baha'i leaders were held for 2 years without formal charges and access to legal representation and they were convicted behind closed doors.

The Senate added its voice to this case by passing a resolution introduced by Senator WYDEN, S. Res. 71, calling on the Government of Iran to release the seven leaders and respect the freedom of religion of the Baha'i community.

These convictions are yet another example of the abuses suffered by the Baha'i community, the largest religious minority in Iran with more than 300,000 members.

The Baha'i are denied official recognition of their faith by the state and are barred from establishing places of worship and schools. According to the U.S. Commission on International Religious Freedom, Baha'is cannot serve in the military and are barred from government jobs and benefits.

In condemning the sentences as a violation of Iran's obligations under the International Covenant on Civil and Political Rights, Secretary of State Hillary Clinton stated: ''Freedom of religion is the birthright of people of all faiths.'' I could not agree more.

As a U.S. Senator representing approximately 30,000 Baha'i Americans in California, I urge the Iranian Government to release these seven leaders and allow the Baha'i community in Iran to practice their religion freely and without fear of persecution.

NATURAL GAS PRODUCTION

Mr. INHOFE. Mr. President, the development of natural gas in the U.S. is vital to our energy security, environment, and economy. As we continue to craft policies affecting the development of natural gas, we must ensure participants in policy crafting are above reproach.

U.S. natural gas supplies are abundant and will increase our Nation's energy security. There is an estimated 2,000 trillion cubic feet of U.S. natural gas reserves found in shale gas plays across the U.S. As countries around the world move aggressively to secure oil resources, U.S. natural gas reserves can play an important role in enhancing our energy security.

The significant U.S. reserves of natural gas provide the opportunity to reshape our energy future. A recent study by the Massachusetts Institute of Technology, MIT, states that natural gas will provide an increasing share of America's energy needs over the next several decades, doubling its share of the energy market from 20 percent today to 40 percent.

The increase in our natural gas reserves is creating economic opportunities for American workers and communities around the country. In 2008, natural gas companies directly employed roughly 622,000 Americans and indirectly sustained almost 2.2 million additional jobs. The industry contributed $385 billion to our Nation's economy in 2008 alone. Representing Oklahoma, I recognize the benefits of the natural gas industry all too well. One in seven jobs in Oklahoma is directly or indirectly supported by the energy industry. According to the U.S. Energy Information Administration, Oklahoma ranks third in the country in natural gas production.

One of the key techniques for natural gas production is hydraulic fracturing. I have spoken on this floor many times over the past 2 years about the value of this production method. Hydraulic fracturing, coupled with horizontal drilling, has not only aided in the production of both oil and natural gas from more than a million wells over the past 60 years, production from thousands of wells is dependent on hydraulic fracturing. First used in 1947, hydraulic fracturing allows previously inaccessible reserves of natural gas to be recovered with a relatively small footprint. A mixture of pressurized water, sand and additives—less than 1 percent of the overall mixture—is used to create small fissures in the shale rock which releases the natural gas, allowing it to flow up the wellbore to be collected.

As natural gas development assumes a more prominent role in our Nation's energy supply, some Members of Congress and the administration are looking at ways to have the federal government regulate the natural gas industry. Natural gas drilling and hydraulic fracturing is regulated effectively at the State level. Legislation has been introduced in Congress, the Fracturing Responsibility and Awareness of Chemicals Act of 2009, FRAC Act, to impose new Federal regulations on hydraulic fracturing which would only add unnecessary regulations on this vital industry.

The Environmental Protection Agency, EPA, is considering how to construct its study of fracking, which was ordered last year by Congress after the agency's 2004 study, that declared the technology safe, was criticized by some groups as being as flawed. The EPA's Science Advisory Board recently released a list of candidates for its panel to assist with the review of its Hydraulic Fracturing Study Plan. This panel is to provide technical and scientific advice to the EPA as it crafts the study plan.

This is a great practice by the EPA to seek advice from knowledgeable experts and sound science to develop policy. These panel members must be above reproach. Sadly, several of these candidates have a troubled history, including questions about expert scientific credentials, error-laden research on the issue of hydraulic fracturing, and questions of objectivity based on previous research and statements regarding fracking.

One nominee is an environmental activist who also happens to be a scientist. A chemist by trade, she consults and advocates against various industries, including the petrochemical and natural gas industries. Her activist roots color her professional judgments. In fact, her expert testimony was once excluded from trial. If her so-called expert judgment was inadequate for a court of law, how can it be adequate for our nation's top environmental agency?

Another nominee issued a draft report concluding that natural gas production specifically using hydraulic fracturing negates the clean burning attributes of natural gas. However, the report contained so many errors that the author was forced to withdraw it shortly after it was released.

It is clear that these nominees are simply opposed to natural gas development and have already rendered a judgment regarding hydraulic fracturing, which raises serious questions about their ability to objectively assess scientific data on this issue and remain impartial. Clearly, they are not impartial.

But more troubling are the questions raised about their scientific credentials and quality of their academic research. Having testimony thrown out by a court of law and being forced to withdraw research on this subject because of errors should disqualify an individual from serving on the Agency's panel of advisors.

EPA record for accepting comments on the nominees to assist the Science Advisory Board will soon close. I know that the EPA has received a wide variety of comments, and I urge the EPA Administrator and the Science Advisory Board to carefully consider these comments so that this study may be above reproach and not be affected by anti-natural gas political agendas.