FDIC and the other cease-and-desist orders the banking institution and lenders are under, nobody is extending credit.

In my State of Georgia—in Atlanta, GA—in 2006 there were 63,000 housing permits. That was 2006, 4 years ago. This year, there were 5,300. That is a 90-percent reduction in new construction. Granted, we were in a hyper-economy in 2006 and, granted, overbuilding probably contributed to the decline of the economy later on, but a 90-percent reduction is unhealthy. If we continue to sustain that reduction, we will continue to sustain what is a difficult economic period now.

We need to be looking to the future. So my recommendations are, first, give us a platform of predictability by extending existing tax rates and not raising them in a rescession. That is No. 1. Secondly, recognize there is no liquidity in mortgage money in the United States.

The longer we wait to address the question of what happens after Freddie and after Fannie, the longer the housing market will suffer. So I propose a solution for that problem in terms of housing finance. I don't think there is any question that Freddie and Fannie have to be wound down. They are in a conservatorship now. They have already cost us billions of dollars, and they will cost us billions more, which is why I worked hard to get them under the financial reregulation bill so we could peel back the layers of the onion and figure out what went wrong, but this body decided not to do that.

But whatever happens, we have to create a new entity, and whatever happens, it will have to look, in some ways, like Freddie and Fannie but in other ways remarkably different. But there has to be a solution. The long-term solution can't be a government-sponsored entity or an implied government guarantee. That is what imploded in terms of Freddie and Fannie. And the taxpayers of America don't want you or me pledging their future full faith and credit behind a mortgage entity just to provide mortgage money. By the same token, they want us to be leaders, to find a way to get from where we are now, with no liquidity, to where we need to be, and that is with good liquidity.

Here is my suggestion: we create a new entity to replace Freddie and Fannie—an entity that ends up having a government-implied sponsorship or guarantee, but over a 10-year period of time, it declines 10 percent a year to zero. During that same 10-year period of time, on every mortgage loan made in the United States, a fee will be attached to it at closing—maybe it is 50 basis points or half a percent, whatever it might be—that goes into a sinking fund. That sinking fund is walled off, and it grows over 10 years. As it grows, the government guarantee declines—for example, a-100 percent guarantee in the first year of the fund, 90 percent in the second year, 80 in the third, going down to zero in 10 years. As that fund guarantee goes down, the fund builds up, so it becomes the backstop for another failure that may or may not happen in the future but one for which we have to plan.

This is not a new idea. There are not a lot of new ideas. In Great Britain, they have had Pool Re for years. That is the sinking fund they set up to handle catastrophic losses in terms of insurance. It has built up to be able to withstand the largest of catastrophic calls and has made their insurance system work very well.

We need to establish a way for the government to sponsor an entity that gets out of the guaranteeing business but gets into the building of liquidity business and becomes an entity that can supply mortgages in the United States because there is not one now and there will not be one in the future until we create an entity that gives a foundation for liquidity to come back to the housing market. So here we are, 30 days from the end of the year. We don't know what our taxes are going to be next year, and if we wanted to go buy a house, we wouldn't know where we would find the mortgage money.

This Senate can act and act quickly to make changes that see to it that jobs come back, and that is by extending the existing tax rates.

When we come back together next year, I look forward to working with my colleagues on the other side and my colleagues in the Senate to create a mortgage-sponsored entity that will work and begin to bring liquidity back to the housing market so that construction returns, jobs come back, and America recovers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, 2 weeks ago, before the Thanksgiving Day recess, I urged Republicans and Democrats in the Senate to come together and take action to begin to end the vacancy crisis that is threatening our Federal courts. My call was not extreme nor radical nor partisan. I asked only that Senators follow the Golden Rule. Regrettably, that did not happen, and that is really too bad for the country.

There are now 38 judicial nominees being delayed who could be confirmed before we adjourn—38 judicial nominees who have had their hearings and whose qualifications are well established.

Two weeks ago, I asked the Republican leadership to treat President Obama's nominees as they would have those of a Republican President. I asked for nothing more than that we move forward together in the spirit that we teach our children from a young age by referring to a nearly universal rule of behavior that extends across most major religions and ethical behavior systems.

I urged adherence to the Golden Rule as a way to look forward and make progress. I had hoped that we could remember our shared values. That simple step would help us return to our Senate traditions and allow the Senate to better fulfill its responsibilities to the American people and the Federal judiciary.

Yesterday, I listened to my dear friend, the senior Senator from Connecticut, Mr. DODD. He gave a lesson similar to others I have heard from Senators over the years—it could have been said by Senators of either party—about why in the Senate we need to work together on certain shared issues. We have 300 million Americans, but only 100 of us have the privilege to serve in this body to represent all 300 million. Senators should certainly stand up for their political positions, but there are certain areas in which the American people expect us to come together. They certainly do not expect us to stall judicial nominations for the sake of stalling, especially nominations that have the strong support of both Republicans and Democrats and that come out of the Judiciary Committee unanimously.

Had we adhered to the Golden Rule, 16 of the judicial nominees being held hostage without a vote, who were each reported unanimously by all Republicans and Democrats on the Judiciary Committee, would have been confirmed before Thanksgiving. So too would an additional nominee supported by all but one of the committee's 19 members. They would be on the Federal bench and Federal judicial vacancies would have been reduced to less than 100. Instead, the across-the-board stalling of judicial nominations that I have been trying to end has continued. We have noncontroversial nominations being delayed and obstructed for no good reason. 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 merely follow the Golden Rule, that would have happened.

As the Senate recessed, the Washington Post and the Charlotte Observer each criticized the stalling of noncontroversial judicial nominees in editorials published the weekend of November 19. The Washington Post entitled its editorial ''Unconscionable Delays for President Obama's Court Picks'' and recognized that ''even nominees without a whiff of opposition are being blocked'' and concluded ''the hold-up of nominees who have garnered unanimous, bipartisan support is particularly offensive.'' The Charlotte Observer entitled its editorial ''Senate Must End Games, Confirm Strong N.C. Judges'' and called what is going on ''infantile political gamesmanship'' and ''partisan high jinks'' in its comments about the delays in considering Judge Albert Diaz and Judge Catherine

Eagles. In an opinion column in Politico, a former judge appointed by a Democratic President and one appointed by a Republican joined together to call for the Senate to address the judicial vacancies crisis. They cited the use of ''secret holds and filibusters to block the votes'' and observed:

Fewer nominees have been confirmed during the Obama administration than at any time since President Richard Nixon was in office. These tactics are, as one senator noted, ''delay for delay's sake.'' They are creating an unprecedented shortfall of judicial confirmations and, ultimately, a shortage of judges available to hear cases. For many Americans, this means justice is likely to be unnecessarily delayed—and often denied.

I will ask that copies of these pieces be printed in the RECORD at the end of my statement.

In addition to letters from the President of the United States, the Chief Judge of the United States Court of Appeals for the Ninth Circuit, the Chief Judge of the United States District Court for the District of Columbia, and the American Bar Association that I placed in the record with my statement on November 18, I have now received a copy of the November 19 letter to Senators REID and MCCONNELL from the Federal Bar Association that I will ask also be print in the RECORD at the conclusion of my statement.

The Federal Bar Association President notes that ''the large number of judicial vacancies prevents the prompt and timely administration of justice'' and that this ''is causing unnecessary hardship and increased costs on individuals and businesses with lawsuits pending in the federal courts.'' She also notes that seven of the judicial nominees who were reported with near unanimity but are being stalled would fill judicial emergency vacancies: Albert Diaz of North Carolina, Kimberly Mueller of California, Ray Lohier of New York, John Gibney of Virginia, Susan Nelson of Minnesota, Mary Murguia of Arizona and Charlton Reeves of Mississippi.

As of today there are 110 vacancies on the Federal courts around the country; 50 of them are for vacancies deemed judicial emergencies by the nonpartisan Administrative Office of the U.S. Courts. 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. So we are currently more than 190 judges short of those needed. I urged, before the last Presidential election, that we pass legislation to create additional judgeships, but unfortunately it was blocked.

The vast majority of the President's judicial nominees are consensus nominees and should be confirmed by large bipartisan majorities. Many of them will be confirmed unanimously. These are well-qualified nominees with the support of their home State Senators, both Republicans and Democrats. I have not proceeded in the Judiciary Committee with a single nominee who is not supported by both home State Senators. I have worked with all Republican Senators to make sure they were included in this process. President Obama has worked hard with home State Senators regardless of party affiliation, and by doing so has done his part to restore comity to the process, as have I as chairman.

Regrettably, despite our efforts and the President's selection of outstanding nominees, the Senate is not being allowed to promptly consider 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.

We have had nominees on whom we have had to file cloture to get to a vote, then the rollcall vote is 100 to 0 or 99 to 0. This makes no sense. It breaks with every tradition in this body. I speak as one who has been here 36 years. There is only one Member of this body who served here longer than I have. I know both Republican and Democratic leaders and Republican and Democratic Presidents and we have never seen this happen. It 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, and Goodwin Liu of California. 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. Republican Senators 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 26 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 12 months ago, and still waits for an 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 seven 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.

Justice Anthony Kennedy, a Republican nominated by a Republican President, spoke to the Ninth Circuit Judicial 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 added:

If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled.

The Advisory Board of the Ninth Circuit sent a letter last week to the majority and minority leaders urging action on pending nominations to address the growing vacancy crisis in that circuit. The Board writes: ''Allowing the current judicial vacancy crisis to continue and expand—as it inevitably will if nothing changes—is unacceptable. The current situation places unreasonable burdens on sitting judges and undermines the ability of our federal courts to serve the people and businesses of the Ninth Circuit.'' I will ask that this letter be printed in the RECORD at the conclusion of my statement.

The District of Columbia suffers from four vacancies on its Federal District Court. We have four outstanding nominees who could help that court, but they are now being delayed. 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. James Boasberg and Amy Jackson could have been reported before Thanksgiving, but were needlessly delayed in Committee for another 2 weeks.

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 seven consensus nominees to the circuit courts who are being stalled on the Senate Executive Calendar. 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 Murguia is from Arizona and is supported by Senator KYL and was reported without opposition. Judge Kathleen O'Malley of Ohio, nominated to the Federal Circuit, was reported without opposition. Susan Carney of Connecticut was reported with 17 bipartisan votes by the Judiciary Committee to serve on the Second Circuit. James Graves of Mississippi was reported unanimously to serve on the Fifth Circuit.

Many of these nominees could have been considered and confirmed before the August recess. 23 of them could have been considered and confirmed before the October recess. They could and should have been confirmed before the Thanksgiving recess. They were not. They are being held in limbo. They do not know where their life should be at this point, and their courts are empty.

They were not considered because of Republican objections that, I suspect, have nothing to do with the qualifications or quality of these nominees. These are not judicial nominees whose judicial philosophy Republicans question. Most of them were voted for by every single Republican on the Senate Judiciary Committee.

The President noted, in his September letter to Senate leaders, that the ''real harm of this political gameplaying falls on the American people, who turn to the courts for justice,'' and that the unnecessary delay in considering these noncontroversial judicial 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 of perpetrators of crimes to small business owners seeking protection from unfair and anticompetitive practices.''

I think the Senate should 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 in their practice any longer. With 110 vacancies plaguing the Federal courts, we do not have the luxury of indulging in these kinds of games.

The Senate is well behind the pace set by the Democratic majority in the Senate considering President Bush's nominations during his first 2 years in office. In fact, at the end of President Bush's second year in office, the Senate, with a Democratic majority, had confirmed 100 of his Federal circuit and district court nominations. I know because they all, every one of them, were 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 fact, in 2002, we proceeded in the lameduck session after the election to confirm 20 more of President Bush's judicial nominees. There are 34 judicial nominees ready for Senate consideration and another 4 noncontroversial nominations on the committee's business agenda. That is 38 additional confirmations that could be easily achieved with a little cooperation from Republicans. That would increase the confirmation from the historically low level of 41 where it currently stands, to almost 80. That would be in the range of judicial confirmations during President George H.W. Bush's first 2 years, 70, while resting 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.

During the 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 25 hearings for President Obama's Federal circuit and district court nominees this Congress. 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 America 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.

I was puzzled to hear the ranking Republican on the Senate Judiciary Committee say a few weeks ago that ''President Obama's nominees have fared better and moved better than President Bush's nominees.'' I have worked with the ranking Republican in connection with our consideration and confirmation of the President's two nominees to the Supreme Court, Justice Sotomayor and Justice Kagan. He opposed both, but agreed that the process was fair. I have worked with him on procedures to consider the President's other nominees and with some exceptions we have been able to have the Judiciary Committee consider and report them. In terms of comparisons, however, we actually reviewed far more of President Bush's nominees during his first 2 years than we have been allowed to consider during President Obama's first 2 years.

The comparison is that I held 26 hearings for 103 of President Bush's Federal circuit and district court nominees and the committee favorably reported 100 of them. All 100 were confirmed by the Senate. We did that in 17 months. By comparison, during the 19 months the committee has been holding hearings on President Obama's Federal circuit and district court nominees, we have held 25 hearings for 80 nominees. Of the 75 favorably reported, only 41 have been considered by the Senate. Several required cloture petitions and votes to end unsuccessful Republican filibusters. There were no Democratic filibusters of President Bush's nominees during the first 2 years of his Presidency.

In sum, the bottom line is that the Senate has been allowed to consider and confirm less than half of the Federal circuit and district court nominees we proceeded to confirm during President Bush's first 2 years. Forty-one confirmations does not equal or exceed the 100 confirmations we achieved during the first 2 years of the Bush administration. For that matter, the 75 Federal circuit and district court nominees voted on and favorably reported on by the Senate Judiciary Committee does not equal the 100 we reported out in less time during the Bush administration. How the ranking Republican can contend that President Obama's nominees ''have fared better and moved faster than President Bush's nominees'' during their first 2 years in office is beyond me.

When I became chairman of the Senate Judiciary Committee midway through President Bush's first tumultuous year in office, I worked hard to

make sure Senate Democrats did not perpetuate the judge wars as a 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 2 years in office, the Senate proceeded to confirm 100 of his judicial nominees.

This chart shows where we were. President Clinton became president and in the first couple of years we went from the 109 vacancies down to 49. Then the Republicans took over, they started pocket-filibustering, and the vacancies went up to 110.

Democrats were in charge for 17 months with a Republican President. We said we were not going to play the games that they did with President Clinton. We brought judicial vacancies down to 60 under President Bush. We actually moved judges faster for President Bush than the Republicans did when they regained control of the Senate.

Towards the end of President Bush's presidency, we got the vacancies down to 34. However, since President Obama has been in power, confirmations have been held up, and vacancies again reached 110. That might sound good in some kind of fund-raising letter. It doesn't sound good if you are the one trying to have your case heard in a court. It does not sound very good if you are the prosecutor and you want a criminal prosecuted and the judge is not there.

What I cannot understand is why, having worked with President Bush to bring the Federal court vacancies down from 110 to 34, and the Federal circuit vacancies which were at a high of 32, down to single digits, judges are still being blocked. It looks like old habits die hard.

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 4 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 are returning 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. The judiciary is not supposed to be political or politicized. When litigants are in a Federal court, they assume they will get impartial justice, regardless of whether they are a Republican or a Democrat. But this kind of game playing, of holding up nominees of a Democratic President, hurts the whole administration of justice.

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 at 110, more than 10 percent.

There are also the personal consequences. We have highly qualified people who get nominated for the Federal court, with backing from the Republican and Democratic Senators from their State. They are in a law practice, and everybody congratulates them. However, their firms are limited in what cases they can take if the nominee stays on, and they end up in limbo.

Many of those people are taking a huge cut in pay to go on the Federal bench. Suddenly, they are forced to wait for 6, 7, 8 months, without being able to earn anything. Then eventually they are confirmed 100 to 0. This needs to change.

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 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.

Mr. President, I ask unanimous consent that the materials to which I referred be printed in the RECORD.

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

[From the Washington Post, Nov. 19, 2010]

UNCONSCIONABLE DELAYS FOR PRESIDENT OBAMA'S COURT PICKS

Mary Helen Murguia enjoys the support of her two Republican home state senators, Jon Kyl and John McCain of Arizona. The Senate Judiciary Committee unanimously approved her nomination in August. Yet Ms. Murguia, President Obama's pick for a seat on the U.S. Court of Appeals for the 9th Circuit, has yet to receive a full vote on the Senate floor.

Albert Diaz, a 4th Circuit nominee, has waited even longer—nearly one year—for his floor vote after receiving a thumbs-up from all 19 of the Judiciary Committee's members and winning the backing of his Republican home state senator, North Carolina's Richard Burr.

Even trial court nominees—typically not the target of stall tactics or intense attacks—are getting caught up in the perplexing political game. Kimberly J. Mueller, for example, also earned unanimous approval from the Judiciary Committee for a California trial court that is among the busiest in the country; she has spent the past six months waiting for final approval.

In all, 23 of Mr. Obama's nominees are awaiting a Senate floor vote; 16 of them received unanimous approval from the Judiciary Committee and the vast majority were deemed ''well qualified'' by the American Bar Association. Eight—including the three mentioned above—have been tapped for seats designated ''judicial emergencies'' because of the length of the vacancy and the workload of the court.

There is plenty of blame to go around for the delays, starting with the president, who has been slow and often late in sending up names. The White House has also been timid in fighting for nominees. Senate Majority Leader Harry M. Reid (D–Nev.) has not been assertive in scheduling floor votes, and the push by some interest groups to win confirmation for liberal favorites such as controversial 9th Circuit pick Goodwin Liu may be holding up progress on the broader slate of more moderate nominees. Republicans, including Minority Leader Mitch McConnell (Ky.), have been all too eager to object to votes even on nominees with bipartisan support. The stall tactics are undoubtedly payback for Democratic filibusters of controversial but highly qualified nominees of President George W. Bush. The difference today is that even nominees without a whiff of opposition are being blocked.

Presidents deserve significant deference in judicial nominations, and every nominee deserves an up-or-down vote. But the hold-up of nominees who have garnered unanimous, bipartisan support is particularly offensive. These nominees should be confirmed swiftly before Congress recesses next month.

[From the Charlotte Observer, Nov. 21, 2010]

SENATE MUST END GAMES, CONFIRM STRONG N.C. JUDGES; CONGRESS' FAILURE TO APPROVE DIAZ, EAGLES IS SHAMEFUL

So here we are, 297 days after the Senate Judiciary Committee unanimously—unanimously!—recommended Judge Albert Diaz of Charlotte for a seat on the federal appeals court. Thanks to infantile political gamesmanship, the Senate still has not confirmed him. And so a judge that most everyone agrees is well-qualified languishes in limbo and a busy court one step below the U.S. Supreme Court remains in a staffing crisis.

Time is running out on the Senate to do the right thing. If it does not confirm Diaz in the current lame duck session, his nomination expires. That would be an ignominious chapter for that once-august body. Facing the same fate: Catherine Eagles of Greensboro, another qualified, non-controversial nominee who in May easily won the Judiciary Committee's approval for a federal judgeship in North Carolina.

Diaz and Eagles are among a couple dozen capable judges whose careers are being hamstrung by partisan high jinks. The whole farce helps explain why the public is disgusted with how Congress operates these days. Many members put party before country.

Democrats and Republicans alike have blocked skilled judicial nominees over the years, particularly in North Carolina. Today,

each party claims that the other is to blame for the current impasse. It appears, though, that Sen. Mitch McConnell, R–Ky., is the biggest impediment.

Republican Sen. Richard Burr and Democratic Sen. Kay Hagan both support Diaz and Eagles. Burr should publicly and privately work to persuade McConnell to permit up-or-down votes on these nominees, without a paralyzing 30 hours of debate on each and every one of them.

This all matters because dozens of seats have reached a level of ''judicial emergency,'' according to the Administrative Office of the U.S. Courts, meaning the workload is unsustainable and judges are needed. That includes the 4th U.S. Circuit Court of Appeals in Richmond, Va. North Carolina is the largest of five states in the circuit but until recently had only one of its three seats on the bench filled.

Diaz, a special Superior Court judge specializing in complex business litigation, is trying to fill a seat that has been vacant for three and a half years. Eagles, a senior resident Superior Court judge, would fill a judgeship that has been vacant for nearly two years. Both received the highest rating from the American Bar Association—''unanimously well qualified.''

McConnell recently reversed his position on earmarks. If he has any sense, he'll now reverse himself on blocking qualified judges this state and the nation need.

[From the Politico, Nov. 18, 2010]

LET'S FIX JUDICIAL NOMINEE PROCESS

(By: Abner J. Mikva and Timothy Lewis)

When the Senate left for the election recess, it had confirmed just one of the 48 pending judicial nominees. Its failure to consider nominations has exacerbated a vacancy crisis for our federal courts that has reached critical proportions.

Almost one in eight seats on the federal bench is empty and has been for months. This grave problem is only likely to worsen as more judges retire and senators block efforts to appoint new ones.

As federal judges appointed by presidents from different parties, we urge the Senate to end the excessive politicization of the confirmation process that is creating these delays.

This obstruction and the way it undermines our democratic process would be outrageous at any time. But it is especially shameful now, because many of these qualified nominees received bipartisan support when nominated and were then approved by the Senate Judiciary Committee with broad support. Yet they have waited more than a year to be confirmed because the Senate never put their nomination to a vote.

Instead of confirming these nominees, some senators have used secret holds and filibusters to block the votes, leaving nominees in limbo for a year or more and undermining the credibility of our judiciary. Fewer nominees have been confirmed during the Obama administration than at any time since President Richard Nixon was in office.

These tactics are, as one senator noted, ''delay for delay's sake.'' They are creating an unprecedented shortfall of judicial confirmations and, ultimately, a shortage of judges available to hear cases. For many Americans, this means justice is likely to be unnecessarily delayed—and often denied.

There are now 106 vacancies on the federal courts, almost half deemed so debilitating that they are labeled ''emergencies'' by the Administrative Office of the U.S. Courts. An additional six seats are slated to become vacant in the next few months. This is untenable for a country that believes in the rule of law.

An increasing number of public officials are now speaking out. President Barack Obama called on the Senate to ''stop playing games'' with the judicial nominations process. Supreme Court Justices Anthony Kennedy and Ruth Bader Ginsburg each independently criticized the partisanship that has permeated the confirmation process. Several other former federal judges joined us in writing a letter to Senate leaders, expressing our dismay and calling for a better confirmation process.

With the Senate now back for the lame-duck session, political pressure on nominations may not be so intense. This is the time for the Senate to return to an effective process for confirming judges—one that can eliminate the appearance of excessive partisanship and apply to both Democratic and Republican administrations.

Only in this way can we begin to restore the public's faith in the integrity of our judiciary, a crucial element of our Constitution's delicate system of checks and balances and fundamental to our democratic system of government.

FEDERAL BAR ASSOCIATION,
OFFICE OF THE PRESIDENT,
New Orleans, LA, November 19, 2010.

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 MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: I write on behalf of the approximately sixteen thousand members of the Federal Bar Association (FBA) to encourage expedient Senate floor action on the judicial candidates reported out of the Senate Judiciary Committee and awaiting a Senate floor vote. As the Senate reconvenes, there is a very real need—in the interest of our federal court system—for the Senate to fulfill its constitutional responsibility to vote on these pending nominees.

The FBA is the foremost national association of private and public attorneys engaged in the practice of law before the federal courts and federal agencies. We seek the fair and swift administration of justice for all litigants in the federal courts. We want to assure that the federal courts are operating at their full, authorized capacity and that justice is timely delivered by the federal courts. The large number of judicial vacancies prevents the prompt and timely administration of justice in the federal courts. This is causing unnecessary hardship and increased costs on individuals and businesses with lawsuits pending in the federal courts.

Our Association's interest is focused upon prompt, dispositive action by the Senate in filling vacancies as they arise on the federal bench. Prompt, dispositive action by the Senate on judicial candidates will assure that lawsuits filed in our federal courts are heard and decided with out delay. The justice system suffers when vacancies are not filled in a timely manner. Vacancies create a burden of added litigation and economic costs that at times overwhelm the system and its ability to hear and decide matters in a timely and effective manner.

Seventeen of the 23 federal judicial candidates who await a Senate floor vote have been approved by the Senate Judiciary Committee by unanimous consent or without controversy. These candidates deserve an up-or-down vote before the 111th Congress reaches an end.

In particular, 7 of these 17 noncontroversial judicial candidates cleared by the Senate Judiciary Committee have been nominated to circuit and district court judgeships that have stood vacant for substantial periods of time and are associated with courts with especially high caseloads. These vacancies have been designated as ''judicial emergencies'' by the Judicial Conference, the policy-making body of the federal judiciary, because each vacancy has existed for a significant period of time and is associated with a court that has caseloads that are considerably higher than normal.

The 7 candidates associated with judicial vacancies that have been designated as ''judicial emergencies'' are:

Albert Diaz, nominated to the Fourth Circuit Court of Appeals (North Carolina), to the judgeship vacated by Judge William Wilkins on July 1, 2007; this vacancy has existed for 1237 days.

Kimberly Mueller, nominated to the Eastern District of California, to the judgeship vacated by Judge Frank C. Damrell on January 1, 2009; this vacancy has existed for 1091 days and is located in the federal district court with the highest caseload in the nation.

Raymond Lohier, nominated to the Second Circuit Court of Appeals (New York), to the judgeship vacated by Justice Sonia Sotomayor on August 6, 2009; this vacancy has existed for 470 days.

John A. Gibney, nominated to the Eastern District of Virginia, to the judgeship vacated by Judge Robert E. Payne on May 7, 2007; this vacancy has existed for 1293 days.

Susan R. Nelson, nominated to the District Court of Minnesota, to the judgeship vacated by Judge James R. Rosenbaum on October 26, 2009; this vacancy has existed for 389 days.

Mary H. Murguia, nominated to the Ninth Circuit Court of Appeals (Arizona), to the judgeship vacated by Judge Michael Daly Hawkins on February 12, 2010; this vacancy has existed for 280 days.

Carlton W. Reeves, nominated to the Southern District Court of Mississippi, to the judgeship vacated by Judge William Henry Barbour, Jr. on February 4, 2006; this vacancy has existed for 1748 days, the longest period of any of these seven candidates.

The Federal Bar Association as a matter of policy takes no position on the credentials or qualifications of specific nominees to the federal bench. The FBA's foremost interest lies in the assurance of prompt, dispositive action by the President in nominating qualified federal judicial candidates and the Senate in either confirming or not confirming them in a prompt manner. Such action will ultimately reduce the number of vacancies to a more tolerable level.

The Federal Bar Association firmly believes that all judicial candidates, once cleared by the Senate Judiciary Committee, deserve a prompt up-or-down vote by the Senate. Swift action is particularly needed on those candidates associated with federal circuit and district courts whose caseloads are in emergency status. We urge the Senate to vote upon these pending nominees before the end of the current legislative session.

Thank you for your support of the nation's federal court system and your consideration of our views.

Sincerely yours,

ASHLEY L. BELLEAU.

ADVISORY BOARD OF THE NINTH CIRCUIT,
November 24, 2010.

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

DEAR SENATORS REID AND MCCONNELL: We write to you as members of the Advisory Board of the Ninth Circuit to seek your assistance and commitment to solve a growing—and increasingly urgent—crisis facing the federal courts of the Ninth Circuit: the ever expanding number of vacancies on both

our district and appellate courts. This growing crisis threatens the effective delivery of justice to the people and businesses who come before our federal courts.

We recognize that you cannot solve this problem alone. The President must select and submit to the Senate for review nominees to fill these vacancies. Consequently, we are seeking the assistance and commitment of the President to address this crisis as well.

It is no exaggeration to call the growing number of judicial vacancies on our federal courts a crisis. Between 1981 and 2008, there were on average 48 vacancies each year for all of the lower federal courts, including vacancies created by two bills expanding the number of federal judges. Over this same period, the nomination and confirmation process filled only 43 vacancies on average each year, causing the vacancy rate to more than double in the last 30 years. In the Ninth Circuit, the number of vacancies has doubled in the last 22 months.

This fact alone would signal a serious problem but the situation is very likely to get worse. Over the next decade, the number of vacancies on the lower federal courts is likely to increase because of the age of current judges and the need to expand the judiciary to keep up with caseload growth. The Justice Department has estimated that annual vacancies over the coming decade will average closer to 60 positions each year. In the last two years, however, only 41 federal judges have been nominated and confirmed to the federal district and appellate courts nationwide. Unless something changes quickly and dramatically, at the end of the coming decade, half the seats on the lower federal courts could be empty.

The Ninth Circuit is fully immersed in this growing crisis. There are currently 18 vacancies among the 142 authorized appellate and district court Article III judges in the Circuit. The President has forwarded to the Senate nominations for ten of these vacancies but the Senate has yet to act on them. While the Senate has confirmed seven nominees to vacancies within the Circuit since January 1, 2009, seven have been pending without a confirmation vote for more than 120 days and three of these have been voted out of the Senate Judiciary Committee and forwarded to the full Senate for action with little or no Committee opposition.

As you know, our federal judiciary at all levels is a beacon of justice across the country and around the world. The judges who sit on our federal courts are dedicated to their jobs and committed to both the rule of law and the ideal of justice for all. Allowing the current judicial vacancy crisis to continue and expand—as it inevitably will if nothing changes—is unacceptable. The current situation places unreasonable burdens on sitting judges and undermines the ability of our federal courts to serve the people and businesses of the Ninth Circuit.

We recognize that both the President's role in nominating individuals to serve as federal judges and the Senate's role in reviewing and determining whether to confirm those nominees are solemn and serious duties. The health and integrity of an entire branch of our government depends on the faithful and careful execution of these duties. We believe, however, that a crisis in one of our branches of government also demands swift, effective, and appropriate action from the coordinate branches. According to the Library of Congress, from 1977 to 2003, the average time from nomination to confirmation for lower federal court judges was less than 90 days. Current vacancies nationwide have been pending for an unsustainable 516 days. On average, the vacancies filled by the 41 judges confirmed during the 111th Congress were pending 803 days from vacancy creation to confirmation. We can and must do better.

For this reason, we ask you to make a commitment to a confirmation vote in the Senate for each judicial nominee within no more than 120 days after the Senate receives a nomination from the President. We will make a similar request of the President to forward nominations to the Senate within no more than 120 days after the President learns of a judicial vacancy. While Congress will ultimately need to pass legislation to expand the federal judiciary, filling the current vacancies in a more timely manner will do much to alleviate the immediate crisis and improve the delivery of judicial services to those who come before the federal courts.

We are convinced that with your leadership and that of the President we can solve the vacancy crisis facing our federal courts. We urge you to make a clear and open commitment to address the vacancy crisis in the Ninth Circuit as expeditiously as possible. Thank you for your consideration of this request.

Sincerely,

Todd D. True (Chair), Seattle, WA; Steve Cochran (Past-Chair), Los Angeles, CA; Robert A. Goodin, San Francisco, CA; Margaret C. Toledo, Sacramento, CA; Janet L. Chubb, Reno, NV; Miriam A. Vogel, Los Angeles, CA; Robert S. Brewer, Jr., San Diego, CA; Eric M. George, Los Angeles, CA; William H. Neukom, San Francisco, CA; Norman C. Hile, Sacramento, CA; Harvey I. Saferstein, Los Angeles, CA; Dana L. Christensen, Kalispell, MT; Robert C. Bundy, Anchorage, AK.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 3:30 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 3:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. MERKLEY).

Mr. BROWN of Ohio. 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. BROWN of Ohio. I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS-CONSENT REQUESTS

Mr. BROWN of Ohio. Mr. President, I will in a moment—in the spirit of fair play, we are waiting for some Republicans to enter the Chamber—I will ask unanimous consent that the Finance Committee be discharged from S. 3981 so we can bring up and move forward on maintaining unemployment benefits for thousands of people. In my State alone, last night at midnight, 88,000—that is 1,000 people in every county; we have 88 counties in Ohio—Ohioans saw their unemployment benefits stopped because my colleagues on the other side of the aisle do not want to maintain unemployment benefits. What is shocking to me is that this Senate and the House of Representatives, regardless of party, for years, when our country has been in bad economic times, have maintained unemployment benefits for laid-off workers.

Senator MCCONNELL, the Republican leader, has made a couple comments that disturb me and make it very hard to do this. We need a supermajority. We need 60 votes. They continue to filibuster or threaten to filibuster. Senator MCCONNELL has made two statements, one through a letter in the last 24 hours and one 3 or 4 weeks ago when he said his No. 1 goal is that Barack Obama be a one-term President. I understand political parties, but his No. 1 goal is that President Obama serve only one term? Minority Leader MCCONNELL, in a letter signed by all his Republican colleagues, which was sent to Senator REID, signed by every Republican, said:

> We write to inform you we will not agree to invoke cloture on the motion to proceed on any legislative item until the Senate has acted to fund the government and we have prevented the tax increases that currently will happen in January.

What the Republicans are doing, I don't even understand it. They are saying they insist on a millionaire and billionaire tax cut come January, and they will, for all intents and purposes, shut down the government if they don't get their way. They are saying: Forget extending unemployment benefits, forget food safety legislation, forget don't ask, don't tell, forget the Russian-American START treaty—it used to be that politics ended at the water's edge; those days are over—and forget a middle-class tax cut. They are saying: We will shut down the government if we can't get a tax cut for billionaires and millionaires. My first priority is extending unemployment benefits to the 60 or 70,000 Michiganders; perhaps from the State of Senator SCHUMER, I would guess over 100,000 New Yorkers; from New Mexico, I would guess probably 10,000; and Alaska, thousands in that State. They are willing to say to those unemployed workers—and this is not unemployment welfare; this is unemployment insurance. Every worker in the State, he or his employer—academicians will debate whether the employee or employer actually pays it, but they put into the unemployment insurance fund. When they are laid off, they get money out of the fund. It is similar to health insurance or car insurance. You don't want to collect on it, but it is called insurance. You hope you are working so you don't have to collect on it, but they need to.

There are five people applying for every open job, on average. In Michigan and Ohio, it is probably worse than that. These are not people sitting around with nothing to do, not wanting to work. I will not do this today, but I have read letter after letter from Ohioans saying: Here is my story. I have lost my medical coverage because I don't have a job, and you are cutting off my unemployment benefits—''you'' meaning the Republican filibuster.