

I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I ask unanimous consent that the quorum call be rescinded.

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

#### DONALD NOMINATION

Mr. ALEXANDER. Madam President, later today the Senate will consider the nomination by the President of Judge Bernice Donald for the Sixth Circuit Court of Appeals. Judge Donald is from Memphis, TN. I know her well. I am here today to introduce her to my colleagues and to encourage them to support her confirmation.

Judge Donald has been before the Senate before. She has been a Federal district judge since 1995. Our Judiciary Committee in the Senate has looked over her qualifications again and has recommended her to us without dissent. The American Bar Association has reviewed her credentials and said she is either qualified or well qualified.

I think there is not much doubt about her fitness to serve on the court of appeals, so in my remarks I would like to talk more about Judge Donald's role in the community and her role as a pioneer in our country during her lifetime. She is the sixth of 10 children. Her parents were a domestic worker and a self-taught mechanic in DeSoto County, MS, which is just south of Memphis. As a young person, she was among the first African Americans to integrate in her high school during the period of desegregation. She obtained a bachelor's degree from the University of Memphis and graduated from its law school. She focused her career at the beginning working among the most vulnerable citizens in Memphis in the Office of Legal Defender.

Here is where the pioneer story continues, not just in desegregating her high school or working with vulnerable citizens, but only 3 years after she left law school, she began a judicial career that has spanned nearly three decades. She became the first African-American female judge in the history of our State in 1982. Six years later, the Sixth Circuit Court of Appeals, upon which she has been nominated to serve by the President, appointed her to serve as U.S. bankruptcy judge for the Western District of Tennessee. Again she made history—an African-American female judge had been appointed as a bankruptcy judge in the United States. Then, in 1995, as I mentioned earlier, President Clinton nominated her to be a Federal district judge. On December 22 of that year the Senate confirmed her by unanimous voice vote, and she became the first African-American female district court judge in the history

of Tennessee. She served in that capacity for 15 years.

She has flourished in her career, not just on the court but in her profession. She has just concluded a 3-year term as Secretary of the American Bar Association, and she has previously served on its Committee on Governance and on its Board of Governors. She has been equally active in the local and Tennessee bar associations. She gives a good deal of her time to community organizations: the Memphis Literacy Council, the University of Memphis alumni board, Big Brothers, Big Sisters, Calvary Street Ministry, the YWCA, and others.

It is coincidental, but I think it is fitting that Judge Bernice Donald, a pioneer in so many ways in our State's history, will be the first nomination for the Federal bench that this body will consider after the opening of the Martin Luther King Memorial in the Nation's Capital. Her life, which is full of education and service and achievement, is a testimonial to the success of Dr. King's movement and the kind of leadership he inspired.

I commend her on all that she has accomplished both in her profession and in our State and in her community. I know Memphis is proud of her. I look forward to voting in favor of her confirmation this afternoon, and I hope my colleagues will do so as well.

I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CASEY). Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, is there a nominee to report?

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF BERNICE BOUIE DONALD TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The bill clerk read the nomination of Bernice Bouie Donald, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes of debate, equally divided, in the usual form.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I wish to speak in support of the nomination of Bernice Bouie Donald as a U.S. Circuit Judge for the Sixth Circuit. With today's vote, we will have confirmed 34 article III judicial nominees during this Congress.

We continue to make great progress in processing President Obama's judicial nominees. We have taken positive action on 78 percent of the judicial nominations submitted during this Congress. The Senate has confirmed 63 percent of President Obama's nominees since the beginning of his Presidency, including two Supreme Court Justices, which everyone may recall was a lengthy process.

Despite our productive efforts, we continue to hear unsubstantiated and unfounded charges of delays and obstruction on the part of the minority party of the Senate. Over the August recess, opinion writers and bloggers parroted one another in churning out this message of obstruction on the part of the Republicans. I am not surprised to see this from outside groups. However, I was very disappointed the White House joined in publishing a distorted record on judicial nominations. I had a meeting this year with the White House Counsel's Office, and at that meeting I expressed my intent to move forward as the Republican leader of the Judiciary Committee Republicans on consensus nominees. I thought we had cooperative and productive conversations with the White House. Furthermore, I have demonstrated a record, on the part of the Republicans on the Judiciary Committee, of cooperation and action regarding judicial nominees.

But in a White House blog that was titled "Record Judicial Diversity, Record Judicial Delays" the White House characterized "the delays these nominees are encountering" as unprecedented. The White House has a short memory or a very limited definition to characterize the nominations process as "unprecedented."

To illustrate, the blog cites a statistic on the average wait time between the Judiciary Committee reporting out a nominee and confirmation on the Senate floor as evidence of an unprecedented delay. For example, it indicates circuit nominees of President Bush only waited 29 days, while President Obama's circuit nominees waited 151 days.

The nominations process, as everyone knows but maybe the White House needs to be informed about, is more than Senate floor action. It starts with the President actually nominating somebody. I have previously commented on the White House delay in sending nominations and have criticized some of the qualities of the nominees the White House has submitted. I will not elaborate on that today. But after a nomination is received, there is a process for hearing, for questions, and for committee debate prior to our committee vote. For whatever reason,

the White House blog fact sheet ignored the bulk of the process.

The record shows, then, that we are moving nominees through committee much faster than President Bush's nominees. For instance, President Obama's circuit court nominees have only waited, on average, 68 days for a hearing. President Bush's circuit court nominees were forced to wait over 247 days. President Obama's district court nominees have been afforded a hearing in just 78 days. President Bush's district court nominees, on the other hand, had to wait close to 120 days. So we can see how wrong the White House blog is when they just cite the waiting period between the committee reporting out and actually voting on it.

Not only are President Obama's judicial nominees receiving hearings quicker than those of President Bush, they are also being reported out of committee more quickly. Circuit court nominees have been reported to the Senate floor in just 118 days, while President Bush's circuit court nominees were held for 369 days before they saw a vote in committee. The same is true for district court nominees. President Obama's nominees have been reported in just 129 days, while President Bush's district court nominees waited 148 days. Despite the so-called obstruction, we are confirming President Obama's circuit court nominees faster than those nominated by President Bush. That is the cooperation I promised. Thus far, circuit court nominees have been confirmed, on average, in 259 days. President Bush's circuit court nominees waited, on average, 350 days.

The White House blog also stated that 21 months is the "[l]ongest wait for one of President Obama's judicial confirmations." This is neither unprecedented nor uncommon. The Democrats should know; they held President Bush's circuit court nominee Raymond Kethledge for 23 months before he was confirmed by the Senate, and then when he was confirmed, he was confirmed on a consensus voice vote basis. In addition, the record will show district nominees who waited well over 1 year for confirmation, one of them as long as 441 days.

After today's vote, there will be 19 judicial nominees on the Executive Calendar. If you listened to my colleagues on the other side of the aisle, you would conclude that this, too, is "unprecedented." But again, the record demonstrates otherwise.

Colleagues may recall a period in the 108th Congress when the Democrats—in the minority at that time—completely shut down the judicial nominations process. Not only were there numerous filibusters conducted by my friends on the other side of the aisle, but they would allow no votes on judicial nominees. As a result, in April and May of 2004, when George W. Bush was President, 32 highly qualified judicial nominees awaited final votes while on the Executive Calendar. Only after a compromise was reached did judicial nomi-

nation votes resume on those who were on the Executive Calendar.

I could continue to rebut this outrageous assertion that Senate Republicans are somehow paving new ground, according to the White House blog. The facts demonstrate that the current status of nominations is not—not—unprecedented. It is unfortunate that the media, the bloggers, and even this administration continue to distort the facts. I would rather use my time to speak on positive actions, such as the nominee we are about to confirm. But if my colleagues on the other side of the aisle wish to continue to live in the past, then I feel, as leader of the Republicans on the Judiciary Committee, the need to correct the record.

I support the nomination before us today, and I congratulate Judge Donald. I wish to say a few words about her before we vote.

Bernice Donald is nominated to be U.S. Circuit Judge for the Sixth Circuit. Judge Donald received her undergraduate degree and law degree from the University of Memphis. After graduating from law school, Judge Donald worked for a few months as a sole practitioner. In April of 1980, she began work as a staff attorney for the Memphis Area Legal Services Clinic. In November of 1980, she began working as an assistant public defender at the Shelby County Public Defender's Office.

In 1982, Judge Donald was elected to serve as a judge on the Court of General Sessions in Shelby County. As a general sessions judge, Judge Donald presided over trials of State misdemeanor offenses, and the preliminary hearings of State felony cases involving alleged crimes against persons as well as property.

In 1988, the U.S. Court of Appeals for the Sixth Circuit appointed Judge Donald to a 14-year term on the Bankruptcy Court.

In 1996, Judge Donald was confirmed by the Senate and appointed by President Clinton as United States District Judge for the Western District of Tennessee. She has served as a Federal judge for the past 15 years.

The American Bar Association's Standing Committee on the Federal Judiciary has given Judge Donald a rating of substantial majority "well-qualified"; minority "qualified."

Mr. President, if I could, I wish to take 2 minutes to speak about the second vote we are having today.

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

LEAHY-SMITH AMERICA INVENTS ACT

Mr. GRASSLEY. Mr. President, I urge my colleagues to support cloture on the motion to proceed to H.R. 1249, the Leahy-Smith America Invents Act. This bipartisan legislation will make our patent system more effective and more efficient. It will enhance transparency and patent quality and improve certainty in the patent process. It will also enhance the ability of the Patent and Trademark Office to cut its

backlog and process patent applications in a more expeditious manner. Ultimately, this bill will help promote innovation and technological advancements and will provide a stimulus for American businesses and, obviously, will help generate new jobs.

My colleagues will recall the Senate passed the bill we entitled the America Invents Act earlier this year by a margin of 95 to 5. The House bill is very similar to our Senate bill, so Senators should not have a problem supporting it. In addition, the Leahy-Smith America Invents Act enjoys the widespread support of a large number of industries and other stakeholders from within the United States patent community.

I am pleased to support the Leahy-Smith America Invents Act, and I urge my colleagues to vote for cloture on the motion to proceed so we can get this bill done as soon as possible.

NATURAL DISASTER IN VERMONT

Mr. President, I am happy to yield the floor, but before I do, I wish to say to Senator LEAHY we are all sorry for the natural disasters that have happened in his State, wish him well and his State well, and, obviously, there will be some congressional action to help not only that natural disaster but the rest of the natural disaster that occurred as a result of Irene.

Mr. LEAHY. Mr. President, if the Senator would yield on that point, I would tell my good friend from Iowa how touched I was when I received his e-mail saying how the people of Iowa have stood with the people of Vermont, as we did with the people of Iowa when they faced a disaster. When I received the e-mail, the Governor of our State, Governor Shumlin, and I and the head of our Vermont National Guard, General Dubie, had just helicoptered into one of our prettiest towns, but it was totally cut off. The only way we could reach it was by helicopter. I saw people working together. Nobody knew whether they were Republicans or Democrats or cared. They were all working together to help each other.

I will tell my friend from Iowa, I took the liberty of showing his very meaningful, very heartfelt e-mail—similar, also, to ones I got from other Senators—and I thought how much that meant. If I might address the Senator from Iowa directly, I will tell you, the people of Vermont appreciate it because I know how heartfelt it was. It meant a great deal.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we are on the question of the flooding in Vermont. I was born in Vermont. I have lived there all of my life. We live on a dirt road in a small town, Middlesex, up about 1,000 feet, in an 1850s farmhouse. It means a lot to us. It is a place my wife Marcelle and I spent part of our honeymoon 49 years ago. But I saw something I had never seen before in Vermont. Ten days ago, Vermont bore the full brunt of then-Tropical

Storm Irene as it dumped more than 6 inches of rain across the State in just a few hours. You have to understand, in our small State—with the Green Mountains running down the spine of it, north to south—the narrow valleys of the Green Mountains, where towns, roads, and rivers are historically intertwined, were particularly hard hit as gentle rivers and streams became rushing torrents of destruction. Whole towns were cut off from the outside world for days. You would fly over, and you could see a town completely marooned—every road going into it, every bridge going into it gone. Homes, businesses, water systems, and miles of roads were swept away. Even worse, some Vermonters lost their lives in these devastating floods.

In our State, we have had an unprecedented wave of flooding this year. We had two spring events previously declared as major disasters. Vermonters have shouldered these great burdens. We have pulled together from all parts of the State, all walks of life. We are meeting this new crisis with the same courage, cooperation, and resilience we Vermonters have always shown.

I applaud the brave first responders—the police departments, the fire departments, the EMS, and others—the National Guard members who have worked around the clock. Our National Guard in Vermont has been joined by the National Guard from Illinois and Maine, and we have had offers from our other adjoining States. I also applaud the power crews and road crews. I remember how impressed I was looking down there from the helicopter and seeing this long line of power trucks coming down the road and knowing they are going to be working around the clock. I also applaud the many others who have helped in the recovery and rebuilding process—our local Red Cross and other service organizations.

But our small State—it is only 660,000 people—is stretched to the limit right now, and we need both immediate and ongoing assistance in recovering from these enormous setbacks. Winter is fast approaching. In Vermont, snow will be flying in a matter of weeks, certainly in a matter of a couple months. We must move quickly to secure our homes and businesses, restore our roads, our bridges, our water systems, our schools, and our medical facilities. With just weeks to accomplish so much, we need the full and immediate support of FEMA and so many of our Federal agencies.

I appreciate President Obama's swift approval of Governor Shumlin's request to declare most of Vermont a Federal disaster area—something all of us in the Vermont delegation joined him in. But I am greatly concerned FEMA may not have adequate resources to meet the immediate assistance needs of the Irene victims in Vermont and all the other States. We do not consider ourselves an island here. We know a whole lot of other States were badly hurt by Irene. FEMA

has less than \$600 million in its disaster account for the rest of fiscal year 2011. OMB said today that FEMA needs at least \$1.5 billion for recovery assistance in States affected by Hurricane Irene.

We need to act quickly to find a solution to this pressing problem. I do not think any of us wants to get into a situation where we underfund FEMA at this critical juncture, and then have FEMA run out of resources next spring, just as rebuilding efforts get going on the East Coast.

Given the breadth and depth of Irene's destruction, on top of the ongoing disasters already declared in all 50 States, I am going to continue to work with the Democratic leader, the Republican leader, the Appropriations Committee, and all of my colleagues to ensure that FEMA has the resources they need to help all of our citizens at this time of disaster—not just in Vermont but in all of our States.

#### IRAQ

Mr. President, as many Members know, I opposed the war in Iraq, believing it had nothing to do with 9/11. It turned out it had nothing to do with 9/11. I thought there were no weapons of mass destruction. It turned out there were no weapons of mass destruction. Iraq is a country that bore no threat to the United States. It did to Iran but not to the United States.

We have spent hundreds of billions, ultimately well over a trillion dollars, in Iraq. Year after year that money is just sent—no offset; it is put on the credit card. It is time to get out of Iraq and start thinking about people in America. It is time to take care of Americans. The needs of Americans are not just in a disaster but in the needs of Americans in their education, their medical care, our scientific research to find cures for cancer and Alzheimer's, to take care of the housing needs of America, to take care of our rivers and bridges. It is time to start worrying about this great country of ours. It is time to start paying for that which can give benefits immediately to Americans and make sure we have enough to care for the families and our returning soldiers who so bravely answered the call. Let's start thinking about the needs of 325 million Americans. Let's come home to the things we need. Because if we do that, we can then still be the force for good throughout the world. We can still fulfill commitments, legitimate commitments we have around the world. We can still be the humanitarian nation we have always been when there have been disasters in Haiti, in Indonesia, in Africa, or elsewhere. But we have neglected America too long.

Mr. President, I understand I have some time.

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. LEAHY. How much?

The PRESIDING OFFICER. Eight minutes remaining.

Mr. LEAHY. I thank the Presiding Officer.

Mr. President, I was disappointed that before the August recess, the Senate was not allowed to take greater steps to address the serious judicial vacancies crisis on Federal courts around the country. As we resume consideration of pending judicial nominations, there are 20 nominees fully considered by the Senate Judiciary Committee and ready for final Senate action. Of those, 16 were approved by the Judiciary Committee unanimously, without a single Republican or Democratic Senator in opposition.

The nomination of Judge Bernice Donald of Tennessee is one such nomination. This is a nomination that has been waiting for Senate consideration, despite the support of her Republican home State Senators, since May 9. Nearly 4 months ago, the Judiciary Committee favorably reported her nomination without opposition. This is reminiscent of the nomination of Jane Stranch of Tennessee. She, too, had the support of her Republican home State Senators, but her confirmation was nonetheless stalled—inexplicably—by Senate Republicans. Judge Stranch was finally confirmed in September 2010, after an extended and unnecessary 10-month delay. These Tennessee nominations were the subject of a column by Professor Carl Tobias in early August, which I inserted in the RECORD on August 2. I, too, had hoped the Senate would be allowed to vote on this nomination last month. I am glad that we finally have agreement for a vote tonight.

At this point in the Presidency of George W. Bush, 144 Federal circuit and district court judges had been confirmed. On September 6 of the third year of President Clinton's administration, 162 Federal circuit and district court judges had been confirmed. By comparison, although there are 20 judicial nominees stalled and awaiting final consideration by the Senate—many of them stalled since May and June—even after the confirmation of Judge Donald, the total confirmations of Federal circuit and district court judges confirmed during the first 3 years of the Obama administration will only be 96.

In the 17 months I chaired the Judiciary Committee during President Bush's first term, the Senate confirmed 100 Federal circuit and district judges. By contrast, President Obama is approaching his 32nd month in office and we have yet to reach that total. The Senate has a long way to go before the end of next year to match the 205 confirmations of President Bush's judicial nominees during his first term.

To understand the strain on the Federal judiciary and the American people, it is important to note another set of comparisons. The number of judicial vacancies was reduced during the first years of the Bush and Clinton administration. The vacancies in early September in the third year of the Bush administration had been reduced to 54. The vacancies in early September in