

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

the third year of the Clinton administration had been reduced to 55. By contrast, the judicial vacancies now in September of the third year of the Obama administration stand at 93. As the Congressional Research Service confirmed in a recent report, this is a historically high level of vacancies and this is now the longest period of historically high vacancy rates on the Federal judiciary in the last 35 years.

Even though Federal judicial vacancies have remained near or above 90 for more than 2 years, the Senate's Republican leadership continues to delay votes on many qualified, consensus nominations. After tonight, there will remain 15 unanimously reported nominees stalled on the calendar. This is not the way to make real progress. In the past, we were able to confirm consensus nominees more promptly, often within days of being reported to the full Senate. They were not forced to languish for months. The American people should not have to wait more weeks and months for the Senate to fulfill its constitutional duty and ensure the ability of our Federal courts to provide justice to Americans around the country.

It is not accurate to pretend that real progress is being made in these circumstances. Vacancies are being kept high, consensus nominees are being delayed, and it is the American people and the Federal courts that are being made to suffer. This is another area in which we must come together for the American people. There is no reason Senators cannot join together to finally bring down the excessive number of vacancies that have persisted on Federal courts throughout the Nation for far too long.

At a time when judicial vacancies remain near or above 90, these needless delays perpetuate the judicial vacancies crisis that Chief Justice Roberts wrote of last December and that the President, the Attorney General, bar associations, and chief judges around the country have urged us to join together to end. The Senate can and should be doing a better job working to ensure the ability of our Federal courts to provide justice to Americans across the country.

We were able to lower vacancies dramatically during President Bush's years in office, cutting them in half during his first term. The Senate has reversed course during the Obama administration, and with Republican objections slowing the pace of confirmations, judicial vacancies have been at crisis levels for over 2 years. As a recent report by the Constitutional Accountability Center noted, "Never before has the number of vacancies risen so sharply and remained so high for so long during a President's term." I ask unanimous consent that an August 5 letter to the editor of the Washington Post from Wade Henderson, entitled "Remiss in confirming judges," and an August 4 article in Politico from Andrew Blotky and Doug Kendall entitled

"It's Senate's duty to confirm judges," be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (see Exhibit 1.)

Mr. LEAHY. Over the 8 years of the Bush administration, from 2001 to 2009, we reduced judicial vacancies from 110 to a low of 34. The vacancy rate—which we reduced from 10 percent to 6 percent by this date in President Bush's third year, and ultimately to less than 4 percent in 2008—is back above 10 percent. Federal judicial vacancies now stand at 93.

Time and time again over the last 2½ years, I have urged the Senate to come together and work to address this crisis. At the beginning of this year, I called for a return to regular order in the consideration of nominations. We have seen that approach work on the Judiciary Committee. I have thanked the Judiciary Committee's ranking member, Senator GRASSLEY, many times for his cooperation with me to make sure that the committee continues to make progress in the consideration of nominations. His approach has been the right approach. Regrettably, it has not been matched on the floor, where the refusal by Republican leadership to come to regular time agreements to consider nominations has put our progress—our positive action—at risk.

I expect the committee in the weeks ahead to continue to make progress and favorably report superbly qualified, consensus judicial nominations to fill vacancies in States throughout the country, in States with Democratic and Republican Senators. Most of these nominations will, I expect, join the 15 on the calendar after tonight's vote that were reported unanimously. I hope that the Americans in those districts will not have to wait for months for the Senate to act to fill the vacancies and ensure that the Federal courts in their States have the judges they need.

Republican obstruction has led to a backlog of dozens of judicial nominations pending on the Senate's Executive Calendar. Half of the judicial nominations on the calendar would fill judicial emergency vacancies. Many were ready for final consideration and confirmation in May and June.

Republican leadership should explain to the people and Senators from South Carolina, Missouri, Louisiana, Maine, New York, Texas, Connecticut, Pennsylvania, and Florida why there continue to be vacancies on the Federal courts in their States that could easily be filled if the Senate would vote on the President's qualified, consensus nominees. Yet those nominees still wait for months on the Senate's calendar. These damaging delays leave the people of these States to bear the brunt of having too few judges available to do the work of the Federal courts.

All 20 of the judicial nominations on the calendar today have been favorably reported by the Judiciary Committee

after a fair but thorough process. We review extensive background material on each nominee. All Senators on the committee, Democratic and Republican, have the opportunity to ask the nominees questions at a live hearing. Senators also have the opportunity to ask questions in writing following the hearing and to meet with the nominees. All of these nominees have a strong commitment to the rule of law and a demonstrated faithfulness to the Constitution. They should not be delayed for weeks and months needlessly after being so thoroughly and fairly considered by the Judiciary Committee.

I continue to urge the Senate to join together to end the judicial vacancies crisis that concerns Chief Justice Roberts, the President, the Attorney General, bar associations, and chief judges around the country. I hope that this month Senators will finally join together to begin to bring down the excessive number of vacancies that have persisted on Federal courts throughout the Nation for far too long. We can and must do better. Vacancies are being kept high, consensus nominees are being delayed, and it is the American people and the Federal courts that are being made to suffer.

EXHIBIT 1

[From the Washington Post, Aug. 5, 2011]

REMISS IN CONFIRMING JUDGES

(By Wade Henderson)

In Ben Pershing's close-to-complete Aug. 2 Fed Page roundup of the most important stories overshadowed by the debt-ceiling debate ["Debt debate isn't only story on Capitol Hill," In Session], one story that failed to make the cut was how the Senate's refusal to vote on 20 judicial nominees before recess has led to almost as many vacancies on the federal bench—111—as there were in January.

During the past two months, the Senate Judiciary Committee has steadily processed nominations, yet the Senate has voted on a mere nine judges. There is no reason to delay confirming every one of the nominees pending before the full Senate. All but one enjoyed strong bipartisan support in committee. In fact, 17 of the 20 were approved without recorded opposition.

Many of these seats have been designated as "judicial emergencies" by the Administrative Office of the U.S. Courts, meaning there are simply not enough judges to get the work done. More and more people seeking to protect their rights in a court of law are forced to wait, and justice delayed is all too often justice denied.

[From Politico, Aug. 3, 2011]

IT'S SENATE'S DUTY TO CONFIRM JUDGES

(By Andrew Blotky and Doug Kendall)

While Washington has been consumed by the debt ceiling crisis, another serious crisis demands the attention of President Barack Obama and the Senate: the threat to justice by our overworked federal judiciary.

There aren't enough judges to hear the cases piling up in federal courtrooms across the country—which for countless Americans means justice significantly delayed and denied.

Our federal courts, which hear cases brought by ordinary Americans to vindicate rights guaranteed by the Constitution, are overworked and understaffed. Today's federal judiciary resembles our armed forces—

stretched thin and deployed on multiple tours of duty.

There are now almost 90 empty seats on the federal bench, with 22 more retirements on the way.

Make no mistake, judges now on the bench are doing their part—and then some. Last month, federal Judge Malcolm Muir died in his chambers at age 96, while working on Social Security appeals. Muir had continued to work literally until his last breath, to reduce the case backlog caused by a judge shortage. He was the fourth oldest judge on the federal bench when he died. Last December, U.S. District Judge James F. McClure Jr. died at age 79—also while working at the courthouse.

With fewer new judges being confirmed, the third branch of government is increasingly run by judges working well into their 80s, 90s and even 100s.

"The way we are going," 7th U.S. Circuit Court of Appeals Judge Richard Cudahy, age 84, said, "it looks to me as if most of the judicial work is going to be done by 80- and 90-year-olds like me . . . since they will be the only ones left to do anything."

There have been at least 80 vacancies on the federal courts for the past 760 straight days and counting, according to a recent Constitutional Accountability Center study. At the same time, only 35 new permanent judgeships have been authorized by Congress in the past 20 years—even as the overall federal caseload has expanded by fully a third.

The third branch is deteriorating largely because of unprecedented Republican obstruction. Senate Republicans refuse to agree to votes for well-qualified nominees, who enjoy the unanimous support of their Republican and Democratic colleagues on the Senate Judiciary Committee. Today, 16 such nominees are waiting for a vote by the Senate, with four more qualified nominees approved by the Judiciary Committee, and new nominations being added regularly to the Senate calendar.

Some Republican senators are blocking—or placing holds—on judicial nominations for reasons unrelated to justice, to serve their own political interests. Republican senators are also delaying or blocking nominees who would fill seats in courtrooms so overwhelmed with cases that they are deemed by the Administrative Office of the United States Courts to be "judicial emergencies." It is a level of obstruction not seen under any previous president in U.S. history.

Again, numbers tell the story. The glacial pace of judicial confirmations has seen the number of judicial vacancies explode from 55, when Obama took office, to 88 today. By this time in the Bush administration, the Senate had confirmed 40 percent more judges than it has during the Obama administration.

Astonishingly, in the past two months, the Senate has voted on just 11 nominations. The chamber could have easily confirmed judges while awaiting a final debt ceiling deal. Instead Republicans blocked, stalled and delayed.

The Senate has now recessed for a month, yet the work of the courts continues.

When judicial vacancies remain at such record levels, needless delays create a crisis that has drawn concern from all corners—including Chief Justice John Roberts, Attorney General Eric Holder, federal judges around the country and bar associations.

The Senate is failing in one of its key constitutional duties. It is preventing the third branch of government from doing its job—and making it impossible for Americans to have their cases heard in a timely fashion.

The solution is simple. With no Supreme Court nomination battle consuming Washington this fall, there are no excuses. The Senate should vote on these waiting nomi-

nees at the earliest possible moment when it returns from its August recess.

It is time for the Senate to do what the Constitution commands—advise and consent to the nomination of qualified judges. The long-term health of the third branch of government depends on it—and so do the American people.

Mr. LEAHY. I have outlined where we stand in comparison to the progress we made when the Senate moved to confirm 205 Federal circuit and district judges during President Bush's first term. Three years into President Obama's administration, we have yet to confirm 100 judges. We are going to have to move pretty quickly to catch up, especially to what a Democratic-controlled Senate did for President Bush. I wish to be able to do the same for President Obama.

AMERICA INVENTS ACT

Mr. LEAHY. Mr. President, I ask unanimous consent that I use my remaining time to speak as in morning business about the America Invents Act and the cloture vote that will be taken tonight on proceeding to that important measure.

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

Mr. LEAHY. The Senate is today turning its attention back to the America Invents Act—a measure that will help create jobs, energize the economy and promote innovation without adding a penny to the deficit. This legislation is a key component of both Democratic and Republican jobs agendas, and is a priority of the Obama administration.

Too often in recent years, good legislation has failed in the Senate because bills have become politicized. That should not be the case with patent reform. Innovation and economic development are not uniquely Democratic or Republican objectives—they are American goals. That is why so many Democratic and Republican Senators have worked closely on this legislation for years, along with a similar bipartisan coalition of House Members.

And that is why a Democratic chairman of the Senate Judiciary Committee can stand on the floor of the Senate and advocate, as I do today, that the Senate pass a House bill, H.R. 1249, sponsored by the Republican chairman of the House Judiciary Committee, LAMAR SMITH of Texas. As Chairman SMITH and I wrote earlier this year in a joint editorial, "Patent reform unleashes American innovation, allowing patent holders to capitalize on their inventions and create products and jobs."

This bill, which passed the House with more than 300 votes, will make crucial improvements to our outdated patent system. These improvements can be divided into three important categories that are particularly noteworthy.

First, the bill will speed the time it takes for applications on true inventions to issue as high quality patents, which can then be commercialized and

used to create jobs. There are nearly 700,000 applications pending at the Patent and Trademark Office (PTO) that have yet to receive any action by the PTO. The Director of the PTO often says that the next great invention that will drive our economic growth is likely sitting in that backlog of applications.

The America Invents Act will ensure that the PTO has the resources it needs to work through its backlog of applications more quickly. The bill accomplishes this objective by authorizing the PTO to set its fees and creates a PTO reserve fund for any fees collected above the appropriated amounts in a given year—so that only the PTO will have access to these fees.

Importantly, the bill also provides immediate tools the PTO needs to fast track applications, and continues discounts for fast tracked applications requested by small business, as well as for applications involving technologies important to the Nation's economy or national competitiveness, thanks to amendments offered in the Senate by Senators BENNET and MENENDEZ.

Second, the America Invents Act will improve the quality of both new patents issued by the PTO, as well as existing patents. High quality patents incentivize inventors and entrepreneurs by providing a limited monopoly over the invention. Low quality patents, conversely, can impede innovation if the product or process already exists.

The bill makes commonsense improvements to the system by allowing, for example, third parties to comment on pending applications so that patent examiners will have more and better information readily available. The bill also implements a National Academy of Sciences recommendation by creating a postgrant review process to weed out recently issued patents that should not have been issued in the first place.

The bill will also improve upon the current system for challenging the validity of a patent at the PTO. The current inter partes reexamination process has been criticized for being too easy to initiate and used to harass legitimate patent owners, while being too lengthy and unwieldy to actually serve as an alternative to litigation when users are confronted with patents of dubious validity.

Third, the America Invents Act will transition our patent filing system from a first-to-invent system to the more objective first-inventor-to-file system, used throughout the rest of the world, while retaining the important grace period that will protect universities and small inventors, in particular. As business competition has gone global, and inventors are increasingly filing applications in the United States and other countries for protection of their inventions, our current system puts American inventors and businesses at a disadvantage.

The differences cause confusion and inefficiencies for American companies