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 nominees 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

and innovators. These problems exist both in the application process and in determining what counts as ''prior art'' in litigation. We debated this change at some length in connection with the Feinstein amendment in March. That amendment was rejected by the Senate by a vote of 87 to 13. The Senate has come down firmly and decisively in favor or modernizing and harmonizing the American patent system with the rest of the world.

The House, to its credit, improved on the Senate bill in this area by including an expanded prior user right with the transition to a first-inventor-to-file system. Prior user rights are important for American manufacturing, in particular.

There is widespread support for the America Invents Act, and with good reason. In March, just before the Senate voted 95–5 to pass the America Invents Act, The New York Times editorialized that the America Invents Act will move America ''toward a more effective and transparent patent protection system'' that will ''encourage investment in inventions'' and ''should benefit the little guy'' by transitioning to a first-inventor-to-file system.

A few weeks ago, the Washington Post editorial board added that ''[i]n the six decades since its last overhaul, the patent system has become creaky,'' but the patent bill ''poised for final approval in the Senate would go a long way toward curing [the] problems.''

The Obama administration issued a Statement of Administration Policy in connection with the House bill, in which it argued that ''[t]he bill's muchneeded reforms to the Nation's patent system will speed deployment of innovative products to market and promote job creation, economic growth, and U.S. economic competitiveness all at no cost to American taxpayers.''

The House bill is not the exact bill I would have written. It contains provisions that were not in the Senate bill, and it omits or changes other provisions from the Senate bill that I supported. But that is the legislative process, and the core elements of the House bill are identical or nearly identical to the core elements of the Senate bill. In addition, the House bill retains amendments adopted during Senate consideration of S. 23, including amendments offered by Senator BENNET, Senator MENENDEZ, Senator KIRK, Senator STABENOW, Senator BINGAMAN, and Senator REID, among others.

The America Invents Act, as passed by the House, will not only implement an improved patent system that will grow the economy and create jobs, but it is the product of a process of which we should all be proud. Democrats and Republicans in the House and Senate have worked together with the administration and all interested stakeholders large and small to craft legislation that has near unanimous support.

I thank Senator KYL, the minority whip, for his comments early today. I agree with him that sending this House-passed bill directly to the President will begin the process of demonstrating to the American people that we can work together, Democrats and Republicans, House and Senate, on their behalf.

Those now advocating for enactment of the America Invents Act without further amendment include the United States Chamber of Commerce, the United Steelworkers, the National Association of Manufacturers, the Association of American Universities, BIO and PhRMA, Community Bankers, the Coalition for 21st Century Patent Reform, the Coalition for Patent Fairness, the Small Business & Entrepreneurship Council, and businesses representing virtually every sector of our economy.

In a recent letter from Louis Foreman, a well known independent inventor, he wrote of his support for the America Invents Act saying:

> The independent inventor has been well represented throughout this process and we are in a unique situation where there is overwhelming support for this legislation. . . . H.R. 1249 is the catalyst necessary to incentivize inventors and entrepreneurs to create the companies that will get our country back on the right path and generate the jobs we sorely need.

American ingenuity and innovation have been a cornerstone of the American economy from the time Thomas Jefferson examined the first patent application to today. A recent Department of Commerce report attributes three-quarters of America's post-World War II economic growth to innovation. It is the patent system that incentivizes that innovation when it holds true to the constitutional imperative to ''promote the progress of science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.''

The Founders recognized the importance of promoting innovation. A number were themselves inventors. The Constitution explicitly grants Congress the power to ''promote the progress of science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.'' The time for Congress to undertake this responsibility and enact patent reform legislation into law is now.

The discoveries made by American inventors and research institutions, commercialized by American companies, and protected and promoted by American patent laws have made our system the envy of the world. But we cannot stand on a 1950s patent system and expect our innovators to flourish in a 21st century world.

The America Invents Act will keep America in its longstanding position at the pinnacle of innovation. This bill will establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs, while making sure no party's access to court is denied.

The President recently called on Congress to pass patent reform as soon as it returned from recess because it will create jobs and improve the economy without adding to the deficit. This bill is bipartisan, it is the product of years of thoughtful bicameral discussions, and it should be sent to the President's desk this week. There is no reason for delay.

When we proceeded to the Senate version of this legislation last February, we did so by unanimous consent. The Senate proceeded to approve patent reform legislation with 95 votes. It is disappointing that we are being delayed from completing this important legislation. Further delay does nothing for American inventors, the American economy or the creation of American jobs. It is time, time to take final action on the America Invents Act.

I see the time has arrived. Is the rollcall automatic?

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Is all time yielded back?

Mr. LEAHY. I yield back.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Bernice Bouie Donald, of Tennessee, to be United States Circuit Judge for the Sixth Circuit?

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER), is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUBIO).

The PRESIDING OFFICER (Mr. BENNET). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 124 Ex.]

YEAS—96

Akaka	Enzi	Manchin
Alexander	Feinstein	McCain
Ayotte	Franken	McCaskill
Barrasso	Gillibrand	McConnell
Baucus	Graham	Menendez
Begich	Grassley	Merkley
Bennet	Hagan	Mikulski
Bingaman	Harkin	Moran
Blumenthal	Hatch	Murkowski
Blunt	Heller	Murray
Boozman	Hoeven	Nelson (NE)
Boxer	Hutchison	Nelson (FL)
Brown (MA)	Inhofe	Paul
Brown (OH)	Inouye	Portman
Burr	Isakson	Pryor
Cantwell	Johanns	Reed
Cardin	Johnson (SD)	Reid
Carper	Johnson (WI)	Risch
Casey	Kerry	Roberts
Chambliss	Kirk	Sanders
Coats	Klobuchar	Schumer
Coburn	Kohl	Sessions
Cochran	Kyl	Shaheen
Collins	Landrieu	Shelby
Conrad	Lautenberg	Snowe
Coons	Leahy	Stabenow
Corker	Lee	Tester
Cornyn	Levin	Thune
Crapo	Lieberman	Toomey
Durbin	Lugar	Udall (CO)

Udall (NM)	Webb	Wicker
Warner	Whitehouse	Wyden

NAYS—2

DeMint	Vitter

NOT VOTING—2

Rockefeller	Rubio

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

LEAHY-SMITH AMERICA INVENTS ACT—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 87, H.R. 1249, the Leahy-Smith America Invents Act:

Harry Reid, Patrick J. Leahy, Thomas R. Carper, Joseph I. Lieberman, Richard Blumenthal, Charles E. Schumer, Amy Klobuchar, Robert Menendez, Jeanne Shaheen, John F. Kerry, Mark Udall, Mark R. Warner, Ben Nelson, Jeff Bingaman, Max Baucus, Mark Begich, Robert P. Casey, Jr.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 1249, an act to amend title 35, United States Code, to provide for patent reform, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUBIO).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 93, nays 5, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—93

Akaka	Brown (MA)	Coons
Alexander	Brown (OH)	Corker
Ayotte	Burr	Cornyn
Barrasso	Cantwell	Crapo
Baucus	Cardin	Durbin
Begich	Carper	Enzi
Bennet	Casey	Feinstein
Bingaman	Chambliss	Franken
Blumenthal	Coats	Gillibrand
Blunt	Cochran	Graham
Boozman	Collins	Grassley
Boxer	Conrad	Hagan
Harkin	Lieberman	Roberts
Hatch	Lugar	Sanders
Heller	Manchin	Schumer
Hoeven	McCain	Sessions
Hutchison	McCaskill	Shaheen
Inhofe	McConnell	Shelby
Inouye	Menendez	Snowe
Isakson	Merkley	Stabenow
Johanns	Mikulski	Tester
Johnson (SD)	Moran	Thune
Kerry	Murkowski	Toomey
Kirk	Murray	Udall (CO)
Klobuchar	Nelson (NE)	Udall (NM)
Kohl	Nelson (FL)	Vitter
Kyl	Portman	Warner
Landrieu	Pryor	Webb
Lautenberg	Reed	Whitehouse
Leahy	Reid	Wicker
Levin	Risch	Wyden

NAYS—5

Coburn	Johnson (WI)	Paul
DeMint	Lee	

NOT VOTING—2

Rockefeller	Rubio

The PRESIDING OFFICER. On this vote, the yeas are 93, the nays are 5. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent to speak as if in morning business.

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

THE ECONOMY

Mr. BROWN of Ohio. Mr. President, yesterday I was in Cincinnati, OH. Terralift has the largest Labor Day gathering in the United States of America by 15,000, 20,000, around Coney Island and just southeast of Cincinnati, not far from the Ohio River. They have a picnic every year celebrating workers, not just organized workers but workers generally.

I met a woman there by the name of Lillian Brayhound, and Ms. Brayhound was wearing a t-shirt that said ''Service Employees International Union.'' I asked her where she works, and she said she is a custodian in downtown Cincinnati. And I remember that 3 or 4 years ago I was at a dinner, and there was a group of workers, all middle-aged women, mostly minorities, mostly African American, a couple Latino women, and they had just signed their first union contract to represent the custodians in downtown Cincinnati office buildings.

I sat down at this table, and I said: What does this new union contract mean to you, to the workers there?

A 50-year-old woman turned to me and she said: This is the first time in my life I have ever had a paid week vacation.

Think about that: This is the first time in my life I have ever had a paid week vacation. That was because those workers, each of them working separately before for a building owner in a downtown Cincinnati office building, had gotten together, had voted to join a union, had the right to organize and bargain collectively. They still weren't getting rich. They still weren't making more than, I believe, if I recall, $10 or $11 an hour. But now they had a bit of a pension, now they had health care, and now they had a chance to actually earn a 1-week vacation, something many, many workers in America don't have the opportunity for. And when I hear people say: Well, unions meant something in the past, but they have outlived their usefulness, that really tells you what that is all about.

We celebrate that on Labor Day, but we also know the union movement is under attack. We look at what has happened in the Ohio Statehouse, where legislators in Columbus, most of whom were elected by talking about lost jobs in large part because of what happened in the Bush administration and the 8 years previously, but people who were very unhappy, as they have a right to be, as they should be, because of lost jobs, but what they have done is, after getting elected, they have gone after collective bargaining rights, worker rights. They have attacked voter rights. They have attacked in far too many cases women's rights.

Let's be clear. It is not teachers and firefighters and police officers who caused Ohio's budget deficit. It is not teachers and firefighters and police officers who caused this financial implosion our Nation has. Look at the history. It has been tax cuts for the wealthy; it has been reckless spending, overspending on corporate welfare, overspending on all kinds of things; it has been regulatory sleepwalking that has left our economy in ruins. As a result, we have a widening income gap, with wages generally stagnant for the last decade for middle-class and working-class voter citizens, wages stagnating or declining for most of the workforce but salaries and bonuses going up for people who are the most privileged, the bankers and wealthy executives and CEOs.

Robert Reich recently pointed out that the 5 percent of Americans with the highest incomes now account for 37 percent of all consumption. Reich points out that when income is concentrated at the top, the middle class doesn't have enough purchasing power to pull themselves out of this recession our economy suffers. The wealthiest people can only spend so much. If the middle class has their wages stagnant or actually decline, there simply isn't the purchasing power we need to create the demand to grow our economy. Our economy has been most prosperous when the middle class is thriving rather than when we have these huge gaps in income.

Today we have lost the consensus that our Nation's prosperity was tied to a thriving middle class, where opportunity was afforded to those seeking to join it.

We used to see that consensus on manufacturing, where an economy built wealth and built strong communities for millions of Americans around production. You only create wealth by mining, by agriculture—growing something—and by manufacturing. Yet we