

York office of Baker Hostetler, is a native of Harlem. He grew up in what was then called the Polo Grounds projects and went to high school at Fordham Prep in the South Bronx.

He earned his undergraduate degree from Harvard University, followed by a master's degree in history, a law degree, and a Ph.D. in American legal history, all from Harvard—I hope no one will hold that against him—and all within 11 years of arriving in Cambridge, from Harlem.

What an amazing man. What an American dream story. I would venture that throughout this country, Dr. Kuntz has few peers, in terms of education and training. But he did not use his degrees to go on to teach and write, a valuable career path, to be sure, but possibly not one that would have put his skills as an advocate and his commitment to the people of New York to their highest and best use.

Instead, Dr. Kuntz went on to log 33 years of litigation experience in some of New York City's finest law firms. Most impressive to me, he served for 23 years as commissioner on the City Civilian Complaint Review Board. This independent agency oversees the investigation of citizens' claims of misconduct by New York City police officers. By all accounts, Dr. Kuntz staked out an admirable middle ground, informed by hard investigative work and careful consideration of all the 5,000 cases that came before the board every year.

When my legal committee looked into his work there, he was praised by both the police side and those who brought cases before the board. In that kind of tempestuous situation, that is rare indeed. Dr. Kuntz's commitment to public service is long and impressive. He served in leadership positions on the Lawyers' Committee for Civil Rights Under Law, the Legal Aid Society, the New York Bar, and PLI, among others.

I will note that Dr. Kuntz will be filling a judicial emergency vacancy in the Eastern District of New York, a court that adjudicates a large share of critical cases, such as terrorism and terrorism financing, organized crime and mortgage fraud.

Dr. Kuntz is sorely needed and more than up for the task. I look forward to Dr. Kuntz's service on the bench. I congratulate him and his family.

I yield the floor 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.

Mr. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

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

## EXECUTIVE SESSION

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NOMINATION OF HENRY F. FLOYD  
TO BE UNITED STATES CIRCUIT  
JUDGE FOR THE FOURTH CIR-  
CUIT

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NOMINATION OF NANNETTE  
JOLIVETTE BROWN TO BE  
UNITED STATES DISTRICT  
JUDGE FOR THE EASTERN DIS-  
TRICT OF LOUISIANA

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NOMINATION OF NANCY  
TORRESEN OF MAINE TO BE  
UNITED STATES DISTRICT  
JUDGE FOR THE DISTRICT OF  
MAINE

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NOMINATION OF WILLIAM  
FRANCIS KUNTZ, II, TO BE  
UNITED STATES DISTRICT  
JUDGE FOR THE EASTERN DIS-  
TRICT OF NEW YORK

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NOMINATION OF MARINA GARCIA  
MARMOLEJO TO BE UNITED  
STATES DISTRICT JUDGE FOR  
THE SOUTHERN DISTRICT OF  
TEXAS

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NOMINATION OF JENNIFER  
GUERIN ZIPPS TO BE UNITED  
STATES DISTRICT JUDGE FOR  
THE DISTRICT OF ARIZONA

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

The bill clerk read the nominations of Henry F. Floyd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit; Nannette Jolivet Brown, of Louisiana, to be United States District Judge for the Eastern District of Louisiana; Nancy Torresen, of Maine, to be United States District Judge for the District of Maine; William Francis Kuntz, II, of New York, to be United States District Judge for the Eastern District of New York; Marina Garcia Marmolejo, of Texas, to be United States District Judge for the Southern District of Texas; and Jennifer Guerin Zipps, of Arizona, to be United States District Judge for the District of Arizona.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour for debate with respect to the nominations, with the time equally divided in the usual form.

The Senator from Vermont.

Mr. LEAHY. Mr. President, that would bring us to 20 minutes of 6. I think there was probably an attempt to vote at 5:30. I ask unanimous consent that the time be still divided in the regular way but the votes begin at 5:30.

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

Mr. LEAHY. Mr. President, today's consideration of six qualified consensus judicial nominations is welcome. It is all too rare. I commend Majority Leader REID for pressing for Senate votes on all 27 of the judicial nominees fully considered by the Senate Judiciary Committee and awaiting final action by the Senate.

We have a judicial vacancy rate that stands at 11 percent. We have 95 vacancies on Federal courts around the country. We have to build on today's efforts, the regular consideration of nominations without needless delay.

I was talking the other day with Bruce Cohen, who is the chief of staff of the Senate Judiciary Committee—chief counsel—and somebody who has had a great deal of experience working with different Senators. We were talking about the fact that there has never been anything such as this. We usually, whether it is a Republican President, Democratic President, Republican-controlled Senate, Democratic-controlled Senate, when nominees go through the Senate Judiciary Committee unanimously, supported by the Senators from their home State, they usually, within a few days during wrap-up, are voice voted through.

Once in a while whoever is leader may need a vote on a Monday afternoon. So the next Monday afternoon one will be voted on. It is always 100 to nothing.

Then we have people go through unanimously, supported by Republican and Democratic Senators, and they wait month after month after month. I hope we can get away from that. I hope, for the integrity of our judicial system, we can get away from that. But also just think of the personal account that it means to the people who have been nominated. If a person is a lawyer, a distinguished lawyer, they are nominated for the Federal bench, everybody is going to congratulate them, saying that is wonderful. Then the rest of their law firm is kind of looking at them, saying: Are you going to leave now? When are you going to leave? Because their life is put on hold. They are probably going to take a significant cut in salary anyway. But they cannot take on new clients.

I hope this is probably an indication we will finally get moving.

The Senate will need to vote on four to six nominations judicial nominees a week, not just this week or next week, but throughout the fall if we are to make a real difference and make real progress. With a judicial vacancy rate that stands at 11 percent and with 95 vacancies on Federal courts around the country, we need to build on today's effort with the regular consideration of nominations without needless delays.

Among the nominees selected for Senate action today from the 27 awaiting final consideration is the nomination of Magistrate Judge Jennifer Guerin Zipps of Arizona. She will fill a vacancy in Tucson created by the tragic murder of Chief Judge Roll earlier

this year. This confirmation sets the benchmark for how judicial nominations should be being treated. It has been little more than 70 days since her nomination was sent to the Senate, and Judge Zips has participated in a hearing, was considered by the committee and is now being confirmed by the Senate. If, on the other hand, Senate Republicans had adhered to the timeframe that they have utilized during the last 2 years for delaying consideration of consensus nominees, Judge Zips would not be considered or confirmed until next year. I know this nomination is important to Senator KYL and I am glad to be able to support it and work with him to have it considered by the Senate. I hope that the Arizona Senators will now give consent for the committee to move forward with the nomination of Rosemary Marquez to fill another emergency vacancy in Arizona so that we can do more to help meet the critical needs on the Federal court in their State.

The judicial emergency vacancy Judge Zips will fill is important, just as the action to fill the judicial emergencies in New York, Texas and on the Fourth Circuit that we will fill today is much needed. There are other nominees ready for final Senate action to fill judicial emergency vacancies on the Second, Fifth and Ninth Circuits and in New York, Pennsylvania, Florida and Texas. Given the extensive delays in filling vacancies, and the historically high level of vacancies that inaction on confirming President Obama's nominees has perpetuated, it is no surprise that so many pending nominees will fill judicial emergency vacancies. Of the 17 judicial nominations Republicans have not consented to consider, that are stuck before the Senate, seven of them would fill judicial emergency vacancies, as well.

I have repeatedly thanked Senator GRASSLEY for his cooperation in making sure that the Senate Judiciary Committee regularly considers nominations. Regrettably, our work has not been matched on the Senate floor, where the refusal by the Republican leadership to promptly consider consensus nominations has contributed to the longest period of historically high vacancy rates in the last 35 years. The six nominees we consider today are double the number allowed to be considered since the August recess. Such unnecessary and unexplained delays are wrong, and are harmful to the Federal judiciary and to the American people who depend on it.

Only one of the nominations which the Republican leadership has agreed to consider will fill a vacancy on our courts of appeals. This is in spite of the fact that four circuit court nominees, all for judicial emergency vacancies and all unanimously voted out of the Judiciary Committee, are awaiting final Senate action. The nomination of Judge Henry Floyd of South Carolina to fill a judicial emergency vacancy the Fourth Circuit is finally being con-

sidered after a wait of nearly 5 months. This is only the fifth circuit court nomination the Senate has been allowed to consider this entire Congress. This stands in sharp contrast to the 17 circuit court nominations in 17 months that we confirmed when I chaired the Judiciary Committee in 2001 and 2002 and President Bush was in the White House.

The nomination of Judge Floyd is another example of how President Obama is working with home State Republican Senators to select a qualified, consensus nominee. Judge Floyd received the highest possible rating from the American Bar Association's Standing Committee on the Federal Judiciary and has the support, as do all the nominees awaiting final Senate action, of both of his home State Senators, in this case two Republican Senators. A Federal District Court Judge for the District of South Carolina since 2003, Judge Floyd previously served as a State court judge for 11 years, and before that he spent 19 years in private practice. It is no surprise that his nomination was reported unanimously by the Judiciary Committee. What is disappointing is that it has taken almost 5 months for Republicans to consent to Senate consideration of this nomination. The people of South Carolina and the other states of the Fourth Circuit—Virginia, Maryland, West Virginia, and North Carolina—should have had a circuit court judge and not a judicial emergency vacancy for the last several months.

They are not alone. There are qualified, consensus nominees who were reported unanimously by the Judiciary Committee now on the Senate calendar to fill judicial emergency vacancies on the Second, Fifth and Ninth Circuits. Those judicial emergency vacancies affect the people of Vermont, Connecticut and New York; Mississippi, Louisiana and Texas; and Washington, Oregon, Montana, Wyoming, Idaho, Nevada, Arizona and California. These are not controversial nominees. The Senate should be able to take up and confirm nominees like Stephen Higginson of Louisiana, nominated to a judicial emergency vacancy on the Fifth Circuit with the support of his home State Senators, one a Democrat, and the other a Republican. His nomination was reported unanimously nearly 3 months ago. The Senate should be able to take up and confirm the nomination of Christopher Droney of Connecticut, nominated to a judicial emergency vacancy on the Second Circuit, who has the support of both of his home State Senators, Senator BLUMENTHAL, a Democrat, and Senator LIEBERMAN, an Independent. The Senate should be able to take up and confirm the nomination of Morgan Christen of Alaska, nominated to a judicial emergency vacancy on the Ninth Circuit, who has the support of both of her home State Senators, Senator MURKOWSKI, a Republican, and Senator BEGICH, a Democrat. Each of these circuit nominees re-

ceived the unanimous support of all Democrats and all Republicans serving on the Judiciary Committee. Each is being delayed from filling a judicial emergency vacancy and serving the people of their State and their circuit.

Republicans who will not consent to votes on these nominations should explain to the people of the many States that comprise the Second Circuit—Vermont's circuit—and the Fifth and Ninth Circuits why those important Federal appeals courts are short on badly needed judges who could be confirmed today.

The Senate's Republican leadership continues to delay votes on qualified, consensus district court nominations, as well, leading to the backlog we have today of over two dozen judicial nominations pending on the Senate's Executive Calendar—nearly half of them to fill judicial emergency vacancies. They continue to refuse to consent to votes on 17 of the 27 nominations and have unnecessarily delayed votes on all of them for months.

Millions and millions of Americans are directly affected by this obstruction. More than half of all Americans—nearly 170 million—live in districts or circuits that have a vacancy that would be filled today if the Senate would act. More than half of all States—26—are served by courts that have nominations currently pending on the Senate's Executive Calendar. The Republican leadership should explain to the millions of Americans in these States why they will not vote. They should explain to the people of New York, Texas, Pennsylvania, Florida, Wyoming, Alaska, California, and Delaware why they will not consent to votes today on qualified, consensus nominees to fill vacancies on the Federal trial courts in their States.

These 170 million Americans should not have to wait additional 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. They should not have to bear the brunt of having too few judges available to do the work of the Federal courts. At a time when judicial vacancies have remained at historically high levels for over 2 years, 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 could easily act today to improve this situation dramatically and alleviate the crisis. Of the 17 nominations the Republicans continue to obstruct, 15 were reported by the committee unanimously. All of these consensus nominees have been favorably reported after a fair but thorough process, including extensive background material

on each nominee and the opportunity for all Senators on the committee, Democratic and Republican, to meet with and question the nominees. They have a strong commitment to the rule of law and a demonstrated faithfulness to the Constitution. These are the kinds of consensus nominees that in past years would have been considered and confirmed within days or weeks of being reported, not delayed for weeks and months.

During the first years of the Bush and Clinton administrations, we were able to reduce vacancies significantly by confirming judges. The vacancies that had numbered over 100 early in those administrations were dramatically reduced by this juncture. By early October in the third year of the Bush administration judicial vacancies had been reduced to 46. By early October in the third year of the Clinton administration they had been reduced to 57. In contrast, the judicial vacancies now in October of the third year of the Obama administration stand at 95, with a vacancy rate of 11 percent. That is a vacancy rate that is more than double where it stood at this point in President Bush's third year.

Rather than coming down as they have in the past with Republican and Democratic presidents, Federal judicial vacancies have remained near or above 90 for more than 2 years. 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.

I hope that we can come together to return to regular order in the consideration of nominations as we have on the Judiciary Committee. The refusal by Republican leadership to come to regular time agreements for the Senate to vote on nominations continues to put our progress—our positive action—at risk. It does no good for the Judiciary Committee to vote on judicial nominees if the Senate does not act to confirm them. The hard work of the Judiciary Committee is being squandered. When the Senate is prevented from acting, as it has been with respect to 17 of the 27 judicial nominations left pending before it, the vacancies persist and the American people are not being served.

Last month, a Republican Senator was in error when he told the Senate and the American people that the Senate had already confirmed 67 article III judges this year. Had we, the Federal judicial vacancies would not remain at crisis levels. I wish he had been correct, but sadly he was not. At the time, only 38 nominees had been confirmed. Even if Senate Republicans were to abandon their obstructionist tactics and allow votes on all 27 of the judicial nominations currently awaiting final Senate action, we would still fall short of his proclamation.

In fact, even after an additional six confirmations today, the Senate will

have confirmed only 44 judicial nominations, less even than last year. The first year of the Obama administration, Republicans would only allow 12 judicial nominees to be confirmed. That was the lowest total in more than 50 years. After last year, the total number of judicial nominees allowed to be confirmed was the lowest total for the first 2 years of an administration in 35 years. Last year, the Senate adjourned and left 19 judicial nominees without final action. Most had to be renominated again this year. The last of those nominees was not confirmed until June 21 of this year. Last year's stalling took us an extra 6 months to remedy. Accordingly, the Senate's confirmation of judicial nominees who had their hearings and were considered by the committee this year will total only 27 after the confirmations today.

Some seek to justify their continuing failure to take serious action to address the vacancies crisis by recalling selected instances where Democrats opposed some of President Bush's most controversial nominees. That is no justification for the across-the-board stalling on consensus judicial nominees. And this ignores the fact that we were able to make real progress in those years to confirm judicial nominees and fill vacancies. We confirmed 100 judges in the 17 months I chaired the Judiciary Committee in 2001 and 2002. The Senate will not confirm the 100th of President Obama's circuit and district court judges until today, during the 33rd month of the Obama administration, nearly twice as long.

At the end of President Bush's first 4 years in office, the Senate had confirmed 205 of his judicial nominees. We have a long way to go to reach that total before the end of next year. At this point in the presidency of George W. Bush, 162 Federal circuit and district court judges had been confirmed. On October 3 of the third year of President Clinton's administration, 163 Federal circuit and district court judges had been confirmed. By comparison, after today we will have confirmed only 104 of President Obama's circuit and district court nominees. To match the total at end of President Bush's first term the Senate will need to confirm more than 100 Federal circuit and district court judges during the next year. That means doubling to tripling the pace at which the Senate has been acting.

We can and must do better to address the serious judicial vacancies crisis on Federal courts around the country that has persisted for over 2 years. We can and must do better for the nearly 170 million Americans being made to suffer by these unnecessary delays.

Mr. VITTER. Mr. President, I am happy to support Nannette Jolivet-Brown's nomination to the Eastern District of Louisiana. She is an experienced, real world practitioner with strong ties to the Louisiana legal community. I was very pleased when the president nominated my former class-

mate at Tulane Law School to the Federal bench. She possesses a wonderful, warm, calm personality that is perfectly suited to the right demeanor a judge should have.

Nannette is currently serving as the city attorney for New Orleans, a challenging position that is tasked with providing legal advice to all city officials and departments in addition to representing New Orleans in all legal matters. She has handled this responsibility well and her experience as a public servant will be an asset to her new position as a Federal judge.

Throughout her career in private practice, Ms. Brown established herself as an expert in environmental law. Additionally, she has taught law at Loyola University New Orleans, the Southern University Law Center, and as a teaching fellow at Tulane Law School.

Nannette Brown will bring a wealth of both public and private sector experience to the Federal bench, as she has practiced, taught, and administered the law throughout her career. She is exceptionally qualified to serve as a Federal judge.

I believe that the Constitution is clear that judges must interpret the law and not legislate from the bench. Accordingly, we have a responsibility to confirm judges who respect the rule of law and will practice judicial restraint. I am confident that Nannette Brown will be just such a judge. I urge my fellow Senators to unanimously support her confirmation today.

Ms. COLLINS. Mr. President, I am honored to support the nomination of Nancy Torresen to be a U.S. District Judge for Maine. She is eminently well qualified to be confirmed. She has led an exemplary career of public service, culminating in her current position as an assistant U.S. attorney.

Ms. Torresen graduated from Hope College cum laude in 1981 and received her law degree cum laude in 1987 from the University of Michigan Law School where she was executive editor of the Law Review. After graduation, she came to Maine to serve as a law clerk to the extraordinarily well-respected Maine Judge Conrad Cyr. From 1988 to 1990, she worked at the law firm Williams and Connolly here in Washington.

In 1990, she had the good judgment to return to Maine when she became an assistant U.S. attorney for the District of Maine and initially handled civil matters involving Federal agencies.

In 1994, she was assigned to the appellate section of the criminal division of the Maine attorney general's office where she was responsible for representing the State in appeals of serious violent crime convictions.

In 2001, Ms. Torresen returned to the U.S. attorney's office where she has been responsible for investigating and prosecuting Federal crimes in the northern half of Maine.

I am impressed by her dedication and passion for the law. I also appreciate her 21-year long commitment to public

service. She has remarked that she is proudest of her criminal prosecution efforts because of the urgent need to protect the public from violent criminals and her desire not to let down the victims.

One of her more significant cases was the recent prosecution of a multistate bank robber dubbed the "Burly Bandit." From April through July, Robert Ferguson robbed more than 10 banks and credit unions throughout New England. The spree ended with a robbery of Bangor Savings Bank in July, and on October 1 of last year Mr. Ferguson pleaded guilty in U.S. district court in Bangor to 11 counts of bank robbery. Maine's U.S. attorney recognized Ms. Torresen for her outstanding work in coordinating the prosecution in the six States.

Except for a brief stint in private practice, Ms. Torresen's entire career has been that of a dedicated public servant. She is well respected in the legal community and was rated "unanimously well-qualified" by the American Bar Association.

Let me share one of my many conversations with her colleagues in the Maine legal community. Tim Woodcock is a well-known attorney in Bangor, whose comments are very typical of what I heard when I called and asked people what they thought of Ms. Torresen. Tim said that he regards her as "highly professional, extremely capable, tough, but fair and is a strong advocate for the adherence by law enforcement to all legal requirements."

These are all qualities that we should look for in our judicial nominees. Ms. Torresen's work as a prosecutor in both the Federal and State judicial systems, her integrity, her temperament, and her respect for precedent make her well qualified to serve as Maine's next Federal judge.

Maine has a long, proud history of superb federal judges, and I believe that Ms. Torresen will continue that tradition if confirmed.

I urge my colleagues to support her nomination.

Mr. KYL. Mr. President, I strongly support the nomination of Magistrate Judge Jennifer Guerin Zipps to the Federal district court.

At the outset, I would like to point out that Judge Zipps has been nominated to fill the seat once occupied by Chief Judge John Roll, who was, of course, murdered earlier this year during the same attack that left Congresswoman GABRIELLE GIFFORDS gravely wounded. On every level, this was a tragic loss for Arizona and the judiciary. John Roll was known for his fairness to those who appeared before him, plaintiffs and defendants alike. As chief judge, he was a tireless advocate for all Arizonans, working to ensure that the federal courts in our state were able to handle growing caseloads while simultaneously seeking swift and fair justice for all.

The day we lost Chief Judge Roll, we lost an outstanding jurist, a dedicated

public servant, and a great Arizonan. Judge Zipps has big shoes to fill, but I am confident she is up to the challenge, and that she will serve with honor and distinction.

I would like to say a few words about the background of Judge Zipps. Her qualifications are quite strong. Judge Zipps graduated from the University of Arizona and from Georgetown University Law Center. After law school, she clerked on the Ninth Circuit for Judge Canby and then worked for 4 years at the law firm of Molloy, Jones & Donahue. She spent the next decade as an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Arizona. She rose to be chief of the Civil Division and for the last three years was the Chief Assistant in the office. She earned numerous awards, including one for leadership and one for her performance as the civil chief. It is easy to see why Judge Zipps was awarded the ABA's highest rating: Unanimous "Well Qualified."

Judge Zipps has served as a magistrate on the Federal district court in Arizona since 2005. She has a distinguished record that has earned the respect of the legal community in Arizona. With her judicial experience, Judge Zipps will be able to hit the ground running and help tackle one of the heaviest caseloads in the Federal judiciary.

Perhaps most telling is the high regard in which Judge Zipps is held by her colleagues on the district court. They come from different backgrounds and were appointed by Presidents of both parties, but they all speak highly of her.

Mr. MCCONNELL. Mr. President, I will vote to confirm Judge Henry Floyd to the United States Court of Appeals for the Fourth Circuit despite my strong disagreement with his ruling in an important case that involved our national security. As a Federal district court judge in 2005, Judge Floyd ruled that the President of the United States did not have the authority to detain as an enemy combatant Jose Padilla, the so-called Dirty Bomber, because Mr. Padilla was an American citizen who was apprehended in the United States. The U.S. Court of Appeals for the Fourth Circuit reversed Judge Floyd in that case. The Fourth Circuit noted, correctly in my view, that under the plain language of the Authorization for Use of Military Force and the plurality opinion of the Supreme Court in *Hamdi* versus *Rumsfeld*, the place of Mr. Padilla's eventual capture was immaterial to the authority of the Commander-in-Chief to detain him as an enemy combatant. Mr. Padilla had associated himself with al-Qaida in Afghanistan during hostilities against U.S. forces. Mr. Padilla then fled to Pakistan, whereupon he met with Khalid Sheikh Mohammed, who directed him to travel to the United States to blow up apartment buildings. Mr. Padilla was in the United States at the time of his capture in order to carry

out this mission. As a result, the Fourth Circuit correctly held that the President could properly designate and detain Mr. Padilla as an enemy combatant. Judge Floyd erred in adopting a rule that would, in essence, allow enemy combatants to escape military jurisdiction if they simply succeed in entering—or re-entering—the United States—and in Mr. Padilla's case, for the purpose of conducting additional and lethal operations against the United States and its citizens.

Judge Floyd has had an accomplished legal career, and has served with distinction as a state and federal judge for nearly two decades. Because of this lengthy and distinguished judicial record, I supported his nomination to the Fourth Circuit, despite my serious disagreement with his ruling in the Padilla case.

#### VERMONT DEVASTATION

Mr. LEAHY. Mr. President, I wish to talk about the devastating flooding in Vermont but also our recovery. Last week, my wife Marcelle and I probably drove 400 miles around the State of Vermont—inside the State. We are a small State. The distinguished Presiding Officer knows how in small States one can go from one end to the other fairly quickly. But we crisscrossed the State over a period of a little over 1 week, a lot of the time just the two of us in the car. We would drive around and say thank you to volunteers.

Some of the things we saw were so touching. People who had lost everything were helping others and vice versa. The spirit is wonderful. The reality is, our little State, the State where both my wife and I were born, has been hurt in a way we have not seen in our lifetime.

I have talked about these inspiring actions of Vermonters. One of the things we saw is some of the worst damage caused by the storm has been to the houses and mobile homes and apartments, where Vermonters had built their lives. They had made their homes, had become part of the community. Their kids go to school. They are the fabric of the community.

We have seen entire mobile home developments washed away. Where homes once stood, now lies a path of damage and destruction and heartbreak. Look at the horrific flooding we have right here—suddenly no roads where there were roads. Look at the forefront of this picture—a house collapsed in on itself, children's toys on what might have been a playground at one time that is now devastated. I had people tell me: We lost everything. Then, in tears: We lost our wedding album. We lost the pictures of our children when they graduated from high school. We lost pictures of their baptism or their bar mitzvah.

I mean, it tears one apart because they have lost not only their homes, they have lost part of their memories.

I commend my staff both in Washington and in Vermont, because they

have worked sometimes literally around the clock—weekends, evenings, days—to help. They have seen firsthand the ruin and pain delivered by this disaster. They have seen it with their eyes and in the tearful eyes of the families around the State. Over the sounds of generators powering sump pumps and heavy equipment removing debris, we have had countless conversations with people as they stared at foundations—empty foundations—that once held their homes; as they dug toxic muck out of their basements and shops; and as volunteers helped with pulling down wet drywall, in a race against the onset of mold.

Most of these conversations begin with memories of fast-rising water and death-defying rescues. In Northfield—a town a few miles from where I live—dozens of homes along the peaceful Dog River were flooded with as much as 6 feet of water. One homeowner who escaped the rising waters by canoe fears the insurance and FEMA assistance will not be enough to help him restore his home, which is part of his life. Like many of the residents of his Water Street neighborhood, he is left wondering whether rebuilding is possible or even worth the effort.

In Brattleboro, which is down in the southeast corner of our State along the Connecticut River, and which is a boundary between Vermont and New Hampshire, the Brattleboro Housing Authority lost 60 units of housing. They put families in hotels, on their friends' couches, and spread throughout the region, as the housing authority tries desperately to fix what is lost. I saw a lot of that damage. I went there with the Governor and with the head of our Vermont National Guard. I saw it.

In Roxsbury—a beautiful town—one family along a peaceful brook that is normally about 1 foot wide was forced to their roof as floodwaters rose, and the brook became a raging rapid more than 20 feet across and 6 feet deep.

In Duxbury—the next town over from mine—in Quechee, in Berlin, and in nearly a dozen other towns, mobile home parks quickly became submerged. These homes are especially vulnerable to flood damage and are easily destroyed by a few feet of water. These are areas where they have never seen a few feet of water, and suddenly it was there.

Last week, in Woodstock, I visited a mobile home park where, on the night of the flood, the entire community crowded onto a small mound in the middle of the park awaiting rescue, watching as their homes were being destroyed. Marcelle and I stood on that mound. It was a beautiful fall day. We looked down and you could see everything that had been torn up. You could see the gouges and all the damage. I wondered, how could somebody stay in there? Honestly, as the houses were destroyed and they watched that water come up, they probably thought if it comes up any farther, we are going to die.

Just 1 week after the flooding, FEMA estimated that more than 900 homes in Vermont had suffered damage. Today, that number continues to grow, and families who found safety and comfort in their homes before Irene now find themselves living in temporary homes, in shelters and hotels, while winter is quickly, quietly approaching.

Our small State's ability to build new homes depends greatly on support from Federal safety net programs, such as the emergency community development block grant funding that I was proud to support included in the Transportation-HUD appropriations bill. While this emergency funding is a first step in addressing the urgent housing needs of States such as Vermont that have been struck by natural disasters, we know that much more will be needed to help our decimated towns and communities and their citizens get back on their feet.

Housing authorities need section 8 choice vouchers to provide relief to low-income renters permanently displaced, and they need the flexibility to make use of the few available units of government-subsidized housing without the burden of stringent income-eligibility requirements. To some, this sounds like numbers, but it is very important to the people who depend upon them.

I am proud that in the Senate, on the Appropriations Committee over the past several weeks, we have been working so hard and we have been able to make prompt, significant, and bipartisan strides toward addressing the emerging disaster recovery needs in States such as Vermont, New Jersey, and North Carolina. Actually, 48 States face emergency disaster needs this year.

I remember the stories my parents and grandparents told me of flooding long before I was born in Vermont. I am 71 years old, but I have not seen damage and destruction of this magnitude in Vermont in my lifetime. Other States were also hit by Irene and are stretched to the limit. Just as victims of past disasters throughout the country were able to rely on fellow Americans in their times of need—including Vermont—so should Vermonters be able to count on a helping hand when they need it most. It is regrettable and disappointing—actually incomprehensible—that some in Congress continue to insist that assistance can only come at the cost of other Federal programs that are relied upon by the American people. Do we take it out of education or medical research or job creation? Do we rob Peter to pay Paul? Some of these same voices have had no problem with spending hundreds of billions of borrowed dollars on wars waged overseas and on rebuilding communities in Iraq and Afghanistan. They will borrow the money to rebuild roads and villages and homes in Iraq and Afghanistan, but they are going to apply a different standard to recovery efforts that are desperately needed for Ameri-

cans here at home in America. It is Alice in Wonderland. An old Vermonter said to me: You know, PAT, we give them money in Iraq and Afghanistan to build homes and bridges and roads, and then they blow them up. If we build them here in America, we will take care of them and we will use them. I could give a 10-hour speech on the floor on those two sentences, summing up what I have heard from everybody. I don't care what their political background is.

Now is not the time to ask Americans to choose between helping victims of a disaster and funding for cancer research, equipment for first responders, or job-creating programs. We need to come together as a country, as we always have in the past, to pass an emergency disaster relief bill for our States in their time of need.

The Senate has answered the call by passing critical disaster relief legislation. It is time for the House to do the same and let the victims of Hurricane Irene start rebuilding their homes. As they rebuild their homes, they will rebuild their lives. They will rebuild their lives and they will rebuild our communities. When they rebuild our communities, they rebuild our State. We are part of the United States of America.

Mr. President, I yield the floor, and I suggest the absence of a quorum, with the time equally divided on both sides.

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

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. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, today, the Senate will confirm six more of President Obama's judicial nominees. Four of these vacancies have been deemed to be judicial emergencies. With these votes, we will have confirmed over 44 percent of the judicial nominees submitted by President Obama during this Congress, and 66 percent of all his judicial nominees.

As I have stated, the confirmation of executive and judicial appointments is one of the highest responsibilities of the Senate. It is a duty I take seriously. It is not, as some have suggested—a pro forma process. We are not here to merely rubberstamp the President's nominees. Sometimes that process takes a little time. It is the Senate's right and duty to review thoroughly the record, qualifications, and temperament of nominees. Above all, the process is to be treated with respect and with dignity. This is important for the nominees, for the Senate, and for public confidence in our constitutional process.

So I was disturbed to read recent news reports regarding what was described as an induction ceremony in the Northern District of California for

Judge Edward Chen. I believe, at this event, Judge Chen showed disrespect to the Senate and to the confirmation process. I regret that I would have to spend any time on this, and take away from the confirmation of the pending nominees. But there are important points that need to be addressed to protect our process and our members.

The Senate confirmed Judge Chen last May by a 52–46 vote. Needless to say, he was not a consensus nominee. Among the concerns about this nomination was Judge Chen's judicial philosophy, his willingness to adopt the "empathy standard," and concern that he would not set aside his personal views—largely shaped by his long association with the ACLU. Remarks reportedly made at this recent event indicate our concerns were valid.

I have not seen a transcript of the event, but an article entitled "Chen Toasted, Republicans Roasted" makes this look more like a political rally rather than a judicial event. Chief Judge Ware, in commenting on Judge Chen's confirmation quipped, "It made me wonder if Judge Chen should be running for political office." That is what many of us thought was more appropriate for Judge Chen, rather than appointment as a Federal judge.

The news article describes remarks made by Judge Chen, which I can only describe as mocking one of our members, Senator SESSIONS. This is distasteful, if not ironic. It was only after a personal appeal by SENATOR FEINSTEIN to Senator SESSIONS that the vote on Judge Chen went forward. Senator SESSIONS agreed to that vote and pressed other Members to let the vote proceed. If the press accounts are accurate, I believe Judge Chen owes an apology to Senator SESSIONS.

Judge Chen went on to again embrace his ACLU background, stating, "Having the ACLU in your DNA is not a disease, it's an honor." As I have said before, Judge Chen's advocacy on behalf of the ACLU is not disqualifying, by itself. But I have to wonder about the impartiality of Judge Chen. More importantly, what are potential litigants appearing before Judge Chen to think. If the ACLU is an opposing litigant, is there any way to think Judge Chen can be fair and impartial. I would think mandatory recusal would be required in any ACLU case coming before him.

Federal Judges must abide by the code of conduct for United States Judges. I will withhold judgment on whether or not Judge Chen violated those canons, but in my opinion he clearly went too far—particularly with regard to the requirement to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety in all activities, and to refrain from political activity. I hope Judge Chen realizes the important responsibility he has and acts accordingly in the future. I also hope this is a lesson to other nominees—that they treat this process with respect, even after confirmation and appointment.

I have been working throughout this Congress to confirm consensus nominees. I continue to remind my colleagues of the progress we have made. With a hearing in the Judiciary Committee scheduled for tomorrow, 85 percent of President Obama's judicial nominees will have received a hearing. At this point in President Bush's presidency, only 77 percent had been afforded a hearing.

Not only have we processed a higher percentage of nominees, but we have done it in shorter times. President Obama's circuit court nominees have only had to wait, on average, 66 days for a hearing. President Bush's circuit court nominees were forced to wait 247 days. In fact, we will be hearing from a Fourth Circuit nominee tomorrow after only 26 days in committee. None of President Bush's circuit court nominees were afforded a hearing that quickly. President Bush's Fourth Circuit nominees were particularly treated in a harsh manner. My friends on the other side of the aisle allowed four qualified and consensus nominees to languish at a time when the Fourth Circuit was one-quarter vacant.

President Obama's district court nominees have also received better treatment. On average, they have only waited 79 days for a hearing. President Bush's district court nominees waited 247 days. These nominees are also being reported out of committee at a quicker pace as well. On average, President Obama's circuit and district court nominees have been reported more than 66 days faster than President Bush's.

All in all, we have taken positive action on 85 percent of President Obama's judicial nominees this Congress. Even though I am proud of this progress, I must note, I will continue to focus on quality confirmed over quantity confirmed.

Shortly, we will be voting on Henry Floyd, who is nominated to the appeals court for the Fourth Circuit. This is President Obama's fifth nominee to be confirmed to the Fourth Circuit alone. President Bush's nominee to the Fourth Circuit from South Carolina, Steve Matthews, did not receive the same treatment. In fact, he went 484 days without so much as a hearing, let alone an up-or-down vote. Not only that, he was blocked from being considered. I would note the seat to which he was nominated was subsequently filled by a nominee from North Carolina, rather than South Carolina where the vacancy arose.

Another vacancy we will be voting on tonight is the District of Arizona seat held by the late Judge Roll before his tragic and untimely death on January 8, 2011. The entire judicial community felt this great loss. After Judge Roll's murder, I repeatedly implored the administration to focus on filling this seat as quickly as possible. It was deemed to be a judicial emergency instantly. However, it took over 5 months for the administration to

nominate Judge Jennifer Guerin Zipps to the seat, even though she was a sitting magistrate judge. Since the President took his time in submitting a nomination, I felt it appropriate to work with the chairman to move this nomination through in an expeditious manner. Nominated in late June of this year, Judge Zipps received her hearing a mere 34 days later. Judge Zipps was reported to the floor shortly after we returned from the August recess and I am happy we have continued this fast pace and are confirming her to a lifetime position today.

In addition to Judge Floyd and Judge Zipps, we will confirm Nannette Jolivet Brown to be United States District Judge for the Eastern District of Louisiana; Nancy Torresen to be United States District Judge for the District of Maine; William Francis Kuntz to be United States District Judge for the Eastern District of New York; and Marina Garcia Marmolejo to be United States District Judge for the Southern District of Texas.

I am pleased to support each of these nominees. I thank them for their public service and congratulate them on their prior accomplishments and confirmation today.

I would like to say a few words about each of the nominees.

Henry F. Floyd, is nominated to be a circuit judge for the Fourth Circuit. This seat has been deemed to be a judicial emergency. Mr. Floyd is currently a U.S. district court judge for the District of South Carolina. He was nominated to the bench by President George W. Bush in 2003, and has sat by designation on the U.S. Court of Appeals for the Fourth Circuit several times.

Prior to joining the bench, Judge Floyd was elected by the South Carolina General Assembly to serve as a circuit court judge for the Thirteenth Judicial Circuit in 1992.

He began his legal career in private practice, first as a solo practitioner and eventually forming the law firm of Floyd & Welmaker, which then merged with Acker & Acker. He focused on civil, criminal and domestic litigation as well as trust and commercial law. He also served as an attorney for Pickens County while maintaining his full-time law partnership. Judge Floyd is a graduate from Wofford College and received a Juris Doctorate from the University of South Carolina. It was during his second year of law school when Judge Floyd was elected to the South Carolina House of Representatives, serving three terms until 1978.

The ABA Standing Committee on the Federal Judiciary has rated Judge Floyd with a unanimous "Well Qualified" rating.

Nannette Jolivet Brown is nominated to the Eastern District of Louisiana. Ms. Brown currently serves as city attorney for the city of New Orleans, where she represents the city as its chief legal officer. Prior to that, Ms. Brown was in private practice, working on real estate, environmental, personal



injury, insurance, commercial and business law. She taught a number of courses at Southern University Law Center, and was a clinical professor at Loyola University.

From 1994 to 1996, Ms. Brown served as the Director of Sanitation for New Orleans. She was also a teaching fellow at Tulane Law School. Ms. Brown is a graduate from the University of Southwestern Louisiana and received her J.D. and L.L.M. from Tulane Law School.

The ABA Standing Committee on the Federal Judiciary has rated Ms. Brown with a unanimous "Qualified" rating.

Nancy Torresen is nominated to be United States District Judge for the District of Maine. Since 2001, Ms. Torresen has served in the criminal division of the U.S. Attorney's Office in the District of Maine. She has investigated and prosecuted Federal crimes in the northern half of the district.

From 1994 to 2001, the Department of Justice detailed Ms. Torresen to the Maine Department of the Attorney General Criminal Division in the Appellate Section. In this position, Ms. Torresen represented the state of Maine in appeals of serious violent crime convictions.

From 1990 to 1994, Ms. Torresen served as an Assistant United States Attorney for the U.S. Attorney's Office in Maine. She represented a variety of federal agencies in litigation involving medical malpractice, employment and discrimination cases.

She began her legal career as a law clerk with the Honorable Conrad K. Cyr, of the United States District Court for the District of Maine. In 1988, she joined Williams and Connolly as an associate, working on medical malpractice, libel, and contract disputes. Ms. Torresen is a graduate from Hope College with a B.A. and from the University of Michigan School Of Law with a juris doctorate.

The ABA Standing Committee on the Federal Judiciary has unanimously rated Ms. Torresen as "Well Qualified."

William Francis Kuntz, II, is nominated to the Eastern District of New York. This seat also has been deemed to be a judicial emergency. Since 1986, he has been a partner with a number of private law firms. While he has focused his practice on commercial litigation, he has represented financial services institutions, and large industrial entities.

From 1987 through 2010, Mr. Kuntz was appointed by Mayors Koch, Dinkins, Giuliani and Bloomberg, and confirmed by the New York City Council, to serve on the New York City Civilian Complaint Review Board, CCRB. As a commissioner, he has reviewed thousands of complaints filed by citizens against New York City police officers. Mr. Kuntz has taught courses in American Legal History at Brooklyn Law School.

Mr. Kuntz received his bachelor of arts, a master of arts, a juris doctorate, and a Ph.D from Harvard University.

The ABA Standing Committee on the Federal Judiciary has unanimously rated Mr. Kuntz as "Well Qualified."

Marina Garcia Marmolejo, is nominated to the Southern District of Texas. This is another judicial emergency seat. Ms. Marmolejo is currently a partner with Reid Davis LLP., where she has been focusing on complex commercial cases. Prior to this, she served as Of Counsel for two firms, working on complex Federal and State criminal defense matters, public corruption matters, criminal tax fraud, health care fraud, and mortgage fraud.

In 1999, Ms. Marmolejo worked briefly for the law offices of Jesus M. Dominguez before becoming an assistant U.S. attorney in the U.S. Attorney's Office for the Southern District of Texas. As an AUSA, Ms. Marmolejo was assigned to the Organized Crime Drug Enforcement Task Force where she handled narcotics cases and money laundering investigations.

After graduating from law school, Ms. Marmolejo joined the Federal Public Defender's Office for the Western District of Texas as Assistant Public Defender where she remained until 1998. She then moved to the Federal Public Defender's Office for the Southern District of Texas where she again served as an Assistant Public Defender until 1999.

Ms. Marmolejo is a graduate of the University of Incarnate Word and received her master of arts from St. Mary's University Graduate School, and her Juris Doctorate, cum laude, from St. Mary's School of Law.

The ABA Standing Committee on the Federal Judiciary has rated Ms. Marmolejo unanimously "Qualified."

Jennifer Guerin Zipp, nominated to be United States District Judge for the District of Arizona. As I mentioned, this seat has been deemed to be a judicial emergency. Judge Zipp has served as a U.S. magistrate judge since 2005. Prior to her serving on the bench, Judge Zipp served as an assistant U.S. attorney. While in that role, Judge Zipp was promoted to chief of the civil division. She also has private practice experience, serving as an associate in the firm of Molloy, Jones & Donahue. She began her legal career as a clerk for Judge William C. Canby of the Ninth Circuit Court of Appeals.

Judge Zipp is a graduate of the University of Arizona and received her juris doctorate from Georgetown Law. The ABA Standing Committee on the Federal Judiciary has rated Judge Zipp unanimously "Well Qualified."

Mr. President, I yield the floor, and 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. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRAHAM. Mr. President, I rise to speak on two topics, briefly, the

nomination of Judge Henry Floyd for the Fourth Circuit Court of Appeals, and the motion to proceed on China's currency.

First, Judge Henry Floyd has been nominated by President Obama to serve on the Fourth Circuit Court of Appeals in Richmond, VA. He has a lot of bipartisan support from South Carolina. He was nominated by President Bush to be a district court judge. He served as a State court judge before that, and he has a distinguished record as a State and Federal jurist. He is an outstanding choice by the President to serve on the Fourth Circuit Court of Appeals.

I have known Henry Floyd for many years. I have practiced law with him. I have appeared before him as a State judge and have followed his career. He is unanimously rated as well qualified to proceed to the Fourth Circuit. He has an outstanding legal background, great temperament, and is one of the most qualified district court judges in South Carolina. He will serve the people of the Fourth Judicial Circuit well on the court of appeals. He has the kind of intellect and common sense I think most people in this part of the country will appreciate having on the court.

I want to thank the Obama administration, and I urge my colleagues to vote for this well-qualified, fine man to go to the Fourth Circuit Court of Appeals. He has a lot of bipartisan support at home. Everybody who knows Judge Floyd is a big fan—right, left, and center.

#### CHINA'S CURRENCY EXCHANGE PRACTICES

The issue after this vote is whether the Senate should proceed to debate legislation I have authored with Senator SCHUMER and others dealing with the currency exchange practices of the Communist dictatorship of China. I have been involved in this for almost 7 years. We did a sense-of-the-Senate resolution back in 2004, I believe it was, urging the Chinese to change their currency policy.

But what does this mean to the average American? The exchange rate today is 6.38 yuan to the dollar. When you look at the dollar to the euro, I don't know what it is trading today, but it goes up and down every day. China's economy is growing at 9 and 10 percent. They are the second largest economy in the world. They are moving like gangbusters. Does it really matter for them to suppress the value of the currency? Yes, it does.

Any objective observer, looking at the history of the way the Chinese Government deals with its monetary policy, concludes they keep the yuan below its true value to create a discount on products made in China. Look at it this way. If you are competing with China in the world marketplace, not only do you have cheap labor to compete against, but you have the Government of China directly supporting their industries in a way we don't here, and then add to that intellectual property theft. When you do