aware of but I have read about now. They are calling it the National Bank Transfer Day. We are seeing many big banks actually reversing themselves and abandoning their recently announced debit fees in light of the possibility that even more people are going to shift away from the big banks with the monthly debit card fees to community banks and credit unions and other banks that are not imposing the fees.

Big banks are starting to see it just is not good business to nickel and dime their customers and charge them five bucks a month for access to their own checking account. That is what they were doing. At least that is what they were proposing.

Can you imagine the big banks ever changing course like this a few years ago? Not a chance. But through reasonable regulation and consumers standing up and being alert, we are restoring transparency and competition to financial services.

Transparency and competition are part of a good, functioning, free market economy. It is not over by a long shot. The big banks still have enormous power and resources. They are going to continue to try to find ways to make money at the expense of their customers, and that is why we need to do several things.

First, we need to confirm once and for all a Director for the Consumer Financial Protection Bureau. I know Wall Street banks and financial institutions and many on the other side of the aisle hate this new Bureau, as Dale Bumpers used to say, like the Devil hates holy water. But the fact is, this is an agency solely dedicated to ensuring that consumers have good information so they can make good choices. Senate Republicans should lift their hold on Richard Cordray so he can be confirmed to run this important agency. They should stop doing the bidding of the financial institutions who are afraid of oversight and stand on the side of families and small businesses across America.

Second, we need to ensure transparency of all bank fees so consumers cannot be tricked and trapped. This is the role the CFPB will eventually play. But there is no need for banks to wait to provide this transparency. For example, the Pew Charitable Trusts has developed an easy-to-read, one-page model disclosure for banks to list all of the fees they can charge on checking accounts. Banks should immediately adopt this Pew Trust disclosure box so their Web sites are clear to consumers and consumers can actually comparison shop and choose the bank that best serves their needs. This type of standardized fee transparency will help drive consumer business to the good banks, those that play by the rules and offer a good value at a reasonable price.

Third, we have more work to do to bring transparency and competition to the swipe fee system. For example, credit card swipe fees are still entirely unregulated, and they can cost a merchant up to 3 to 4 percent of the transaction amount. Every American should be aware of what it costs a merchant to accept a credit card because ultimately the consumers pay for it.

Consumers should particularly be aware of how much their local small businesses pay in credit card interchange. They should also know how much more rewards cards cost merchants than nonrewards cards. This will help consumers make more informed choices.

If we are for competition and for transparency and for choice, we have to move to a level where consumers have more information. So I call on the Nation's biggest 1 percent of banks, those with over $10 billion in assets, to disclose in their monthly statements of their cardholders the interchange fees the banks received on each credit card transaction.

While it would be ideal for this interchange disclosure to be made known to customers directly at the cash register or on receipts, I recognize that might be difficult. So let's do it on the monthly statement. Big banks can easily modify these monthly statements to show how much the bank received in interchange fees on each transaction. This can happen almost immediately.

This type of transparency is particularly important because we are seeing big banks trying to steer their customers away from paying with debit and toward credit. Have you noticed the ads that are offering rebates on credit cards now; 1 percent, 2 percent, even 3 percent on gasoline? What customers may not realize is that the fee being charged by the credit card company and the bank to the gas station may be far in excess of 3 percent. So they have already taken the money away from consumers as they pay for their gas, and then they toss three pennies back to them.

It is time for a little more disclosure about the actual relationship between those banks, credit card companies, and the consumers and retailers that deal with them.

In closing, I do believe we are at a tipping point when it comes to the balance between Wall Street and Main Street. For too long Main Street businesses and consumers have been playing by the rules, and Wall Street has been rigging the game. Now transparency and competition are being restored to the banking industry.

A member of my staff was down in Georgia over the weekend. He drove by and saw a little bank called Bank of the Ozarks. I do not know what it was doing in Georgia, but it said Bank of the Ozarks. It had a sign outside that said: We agree. Debit cards should be free.

The word is spreading across America. It is an important word to which consumers are paying attention. We are seeing dramatic increases in the Web sites of credit unions and community banks, people transferring their money to where they think they will get better treatment and a better deal. It is called competition. Transparency and competition are coming to the banking industry. Consumers are getting better information, and many of them are making important choices for their families and businesses.

This is going to strengthen small banks and credit unions in Iowa, in Illinois and Connecticut, and many places all around America. It will help small businesses in Iowa, too, as well as Illinois, who are being crushed by hidden swipe fees today. It is going to help the economy move forward in a fair way with real disclosure.

Let's keep this progress moving. I salute those who stood with me on a bipartisan vote on both occasions on the Senate floor to move forward on this important matter. Just a few weeks ago, major publications such as the Wall Street Journal and the Chicago Tribune were jumping all over the ''Durbin fee,'' and they were standing by the big banks that said they were going to put this monthly fee on because of DURBIN.

Guess what. Those banks are backing off now. They realize their customers are leaving if they are not treated properly and fairly. Let's continue that. It is healthy for America and the growth of our economy.

I yield the floor. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF STEPHEN A. HIGGINSON TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

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

The legislative clerk read the nomination of Stephen A. Higginson, of Louisiana, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate, equally divided and controlled in the usual form.

The Senator from Vermont.

Mr. LEAHY. Mr. President, today the Senate will finally vote on the nomination of Stephen Higginson of Louisiana to fill a vacancy on the Fifth Circuit

which has been a judicial emergency for more than a year. I anticipate his nomination, which was reported unanimously by the Judiciary Committee more than 3½ months ago on July 14, will be confirmed overwhelmingly. It would have been confirmed had it been considered before the August recess, rather than subjected to an extensive and unexplained delay. I hope that the Senate will can build on today's vote by soon having up or down votes on the other 22 superbly qualified judicial nominations pending on the Senate calendar. At a time when judicial vacancies have remained at historically high levels for well over 2½ years, we owe it to the American people to work together to ensure that the Federal courts are functioning.

Stephen Higginson is a well-respected consensus nominee who has served as a Federal prosecutor for 23 years. He served as a law clerk to Justice Byron White of the United States Supreme Court and to Chief Judge Patricia Wald of the DC Circuit. He currently teaches law at the New Orleans College of Law. The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Professor Higginson ''well qualified'' to serve on the Fifth Circuit, its highest possible rating. The two Senators from Louisiana, Democratic Senator MARY LANDRIEU and Republican Senator DAVID VITTER, support his nomination. When Senator VITTER introduced Mr. Higginson to the Judiciary Committee in early June, he joined with Senator LANDRIEU ''in being extremely enthusiastic'' about the nomination and said that he ''wholeheartedly support[s]'' the nomination, saying of the nominee:

He has unbelievable academic and intellectual credentials that are unquestioned . . . He [has] won the respect of everyone in the community based on his work ethic, and his honesty, and his integrity, and his dedication to the job.

In the past, such a nominee would go sailing through and not have to wait week after week, month after month after month. Yet despite the strong endorsement by both his Democratic and Republican home State Senators and the support of every Democrat and every Republican on the Committee, Mr. Higginson's nomination has been stalled for months by Republican leadership. The people of Louisiana and the other States of the Fifth Circuit—Mississippi and Texas—deserve an explanation for these unnecessary delays. So do the 161 million Americans who live in districts or circuits who have judicial vacancies that could be filled today if the Senate Republicans agreed to vote on the other 22 nominations that were reported favorably by the Judiciary Committee and are ready for a Senate vote. We have done our work in the Judiciary Committee. We have held hearings on these nominees. We have vetted them. We have gone through FBI reports and Bar Association reports. We have debated the nominations, and we have voted on them. We have sent the nominations to the Senate floor, and they have been languishing ever since.

The needless delays in our confirmation process are affecting millions of Americans around the country. As shown in this chart I have in the Senate Chamber, more than half of all Americans—161 million—live in districts or circuits with a judicial vacancy that could be filled today if the Senate Republicans agreed to vote on the nominations currently pending on the Executive Calendar. Twenty-four States are served by Federal courts with vacancies that could be filled immediately if Republicans would agree to vote on the judicial nominations already reported by the Judiciary Committee. Judicial vacancies in the Second Circuit, which includes Vermont, New York, and Connecticut, the Fifth Circuit, which includes Louisiana, Texas, and Mississippi, the Ninth Circuit, which includes California, Alaska, Nevada, Arizona, Oregon, Idaho, Montana, Washington, and Hawaii, and the Eleventh Circuit, which includes Florida, Georgia, and Alabama, have been designated ''judicial emergencies'' by the Administrative Office of the United States Courts. So have vacancies on district courts in New York, Texas, and Utah.

I would hope my friends on the other side of the aisle would explain to the millions of Americans in these States why the Senate is not being allowed to vote on these vacancies, especially for the consensus nominees who have been vetted and approved by a bipartisan majority—usually unanimously—in the Judiciary Committee.

The American people need functioning Federal courts with judges, not vacancies. Despite the damaging number of vacancies that have persisted throughout President Obama's term, some Republican Senators have tried to excuse their delay in taking up nominations by suggesting that the Senate is doing better than we did during the first 3 years of President Bush's administration. It is true that President Obama is doing better in that he has worked more closely with home State Senators of both parties. As I have noted, all of the judicial nominees pending and being stalled on the Senate Executive Calendar have the support of both home State Senators. That was not true of President Bush's nominees and led to many problems.

There is no good reason or explanation for the Republican leadership's continued refusal to vote on these stalled nominations. Senator GRASSLEY and I have worked together to ensure that each of the 23 nominations now on the Senate calendar was fully considered by the Judiciary Committee after a thorough and fair process, including completing our extensive questionnaire and questioning at a hearing. Like Mr. Higginson, the other 22 nominees who are awaiting final Senate action are qualified nominees, and 19 were reported unanimously by the committee. Yet despite their qualifications and broad bipartisan support, many have languished needlessly on the Executive Calendar for weeks.

These delays are not only unnecessary, they are damaging. The number of judicial vacancies remains at historic levels, having risen above 90 in August 2009, and staying near or above that level ever since. The number of vacancies is twice as high as it was at this point in President Bush's first term, when the Senate was expeditiously voting on consensus judicial nominations. With 1 in 10 Federal judgeships currently vacant, the Senate must come together to address the serious judicial vacancies crisis on Federal courts throughout the country. Bill Robinson, the president of the American Bar Association, recently highlighted the serious problems for businesses and individuals affected by these excessive vacancies in a letter to the Senate leaders, joining Justice Scalia, Justice Kennedy, and Chief Justice Roberts in warning of the serious problems created by persistent judicial vacancies.

The only way to make progress is to fulfill our constitutional duty and confirm qualified judicial nominations to the Federal bench. We remain well behind the pace we set in dramatically reducing vacancies by regularly scheduling votes during President George W. Bush's first term. At this point in President Bush's first term, the Senate had confirmed 166 of his nominees for the Federal circuit and district courts, including 100 during the 17 months that I was chairman of the Judiciary Committee. In contrast, after today's vote, we will have confirmed only 113 of President Obama's nominees to Federal circuit and district courts. Three years into President Bush's first term, the Senate had confirmed 29 circuit judges. After today's vote, we will have confirmed only 22 of President Obama's circuit court nominees. We could make significant progress toward matching that pace if we voted on consensus nominees. Yet President Obama's judicial nominees unanimously reported by the Judiciary Committee—by any measure consensus nominees—have waited an average of 80 days—nearly 3 months—on the Executive Calendar before coming to a vote. President Bush's nominees waited an average of just 28 days. We must bring an end to the needless delays that have obstructed President Obama's nominations to the Federal bench.

During the last work period, the Senate started to make some progress in voting on some of President Obama's longest pending judicial nominees. I thank Majority Leader REID for working hard to schedule these votes. I hope we can build on this progress by continuing to have votes during this work period on consensus nominations. There is no reason we could not vote today on the nominations of Chris Droney of Connecticut to fill a judicial emergency vacancy on the Second Circuit, Morgan Christen of Alaska to fill

a judicial emergency vacancy on the Ninth Circuit, and Adalberto Jordan of Florida to fill a judicial emergency vacancy on the Eleventh Circuit. Like Mr. Higginson, these nominations were all reported unanimously. The circuits to which they are nominated desperately need judges: the Ninth Circuit Court of Appeals alone has four vacancies, worsening what the Los Angeles Times has recently called ''an already critical case backlog'' on that court, which is the largest circuit court in the country, covering California and all of the Western States. I ask unanimous consent that the full text of the LA Times article 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. I hope the 22 judicial nominations pending after today will get a vote soon. We have a long way to go to match the 205 district and circuit court nominations confirmed during President Bush's first term.

With millions of Americans currently affected by judicial vacancies that the Senate could fill today, now is the time for Republicans and Democrats to work together so that our courts can better serve the American people.

I yield the floor.

EXHIBIT 1

[From the Los Angeles Times, Oct. 15, 2011]

JUDGES' DEATHS ADD TO 9TH CIRCUIT BACKLOG

(By Carol J. Williams)

Five judges from the U.S. 9th Circuit Court of Appeals have died this year, worsening an already critical case backlog and spotlighting President Obama's inability to put his judicial choices and stamp on the powerful court.

The deaths of four semi-retired senior jurists and full-time Circuit Judge Pamela Ann Rymer have intensified concerns on the aging bench and among judicial scholars that the 9th Circuit will fall farther behind in what is already the slowest pace of dispensing justice in the federal courts.

Judges of the 9th Circuit currently sit on twice the number of cases each year as those of the other 12 federal appeals courts, according to the Administrative Office of the U.S. Courts. And it takes an average of 16.3 months for the court's panels to issue opinions after an appeal is filed, compared with 11.7 months on average for all circuits. The 9th Circuit has jurisdiction over California and eight other Western states and is authorized to have 29 full-time jurists.

''While we mourn the loss of our colleagues, whom we will miss as friends, we are alarmed by the loss of judicial manpower,'' said 9th Circuit Chief Judge Alex Kozinski, who was appointed to the court by President Reagan. ''A very difficult situation has been seriously exacerbated, and we fear that the public will suffer unless our vacancies are filled very promptly.''

The 9th Circuit is an especially important court because it helps to define many of the nation's laws on immigration, sentencing, intellectual property and civil rights, experts say.

Obama inherited two 9th Circuit vacancies with his inauguration. Two jurists retired last year. Rymer's Sept. 21 death from cancer created another vacancy. Another vacancy looms at the end of the year, when former Chief Judge Mary M. Schroeder plans to take senior status.

Obama has managed to get only one of his picks for the 9th Circuit confirmed by the Senate. He elevated U.S. District Judge Mary H. Murguia in 2010 from the Arizona federal court, leaving that bench with its own manpower crisis after its chief judge, John M. Roll, was killed in the Jan. 8 shooting rampage in Tucson.

Obama's other appeals court nominations, Alaska Supreme Court Justice Morgan Christen and U.S. District Judge Jacqueline H. Nguyen of Los Angeles, are still making their way through the contentious confirmation process. Christen was nominated in May and Nguyen was nominated last month. Obama has yet to name anyone for the other three 9th Circuit vacancies, including one that has been open for seven years because of a dispute between California and Idaho senators over which state gets to propose candidates to the White House. Nationally, Obama nominations are pending in 51 of 92 vacancies.

Some judicial scholars speculate that Obama may be having trouble convincing those he would like to appoint to accept nominations for fear of derailing their legal careers only to be rejected by partisan fights in the Senate. Goodwin Liu, a UC Berkeley law professor twice nominated by Obama, was forced to withdraw earlier this year when Senate Republicans again blocked a confirmation vote.

''What we know is that the nominations haven't been coming through with the speed we would expect. What we don't know is whether that is because the president is not asking people or whether he is being turned down,'' said Arthur Hellman, a University of Pittsburgh law professor and 9th Circuit historian. Citing the relatively low pay compared with what a lawyer can make in private practice and the often withering interrogations in the confirmation process, he said, ''some may be saying it's just not worth it.''

Hellman worries that the overwhelmed 9th Circuit judges will have to cut corners to prevent their case backlog from further increasing. That could mean less time spent reviewing each case, holding fewer oral arguments before issuing decisions or bringing in judges from other circuits who might be unfamiliar with 9th Circuit law.

A call to the White House press office asking why Obama has not nominated more judges wasn't answered Thursday. Earlier in the day, at a session of the Senate Judiciary Committee, its Democratic chairman blamed Republicans for stalling judicial appointments by refusing to give consent for confirmation votes even on candidates voted out of committee with unanimous support.

''Millions of Americans across the country are harmed by delays in overburdened courts,'' said Sen. Patrick J. Leahy (D–Vt.). ''The Republican leadership should explain to the American people why they will not consent to vote on the qualified, consensus candidates nominated to fill these extended judicial vacancies.''

The committee's ranking member, Sen. Charles E. Grassley (R–Iowa), countered with a claim that the Senate is ''ahead of the pace'' compared with the confirmation rate of the Democratic-controlled Congress during the Bush administration. His comment followed Thursday's confirmation vote on three of 30 Obama judicial nominations that Republicans agreed to bring to a vote.

Even if Obama acts quickly to nominate three more 9th Circuit judges, the impending 2012 campaign could thwart Senate approval of those choices, said Michael McConnell, a Stanford law professor and former judge on the 10th Circuit.

Russell Wheeler, a Brookings Institution fellow and veteran analyst of the federal courts, said Obama is entering ''uncharted territory'' with the 9th Circuit vacancies occurring so late in his term.

Noting that Bush got Senate confirmation of 35 federal judges in the last 15 months before his 2004 reelection bid, Wheeler said, ''I doubt Obama will do as well, but confirmations are not going to stop altogether.''

Some judicial analysts also lament that the administration hasn't pushed Congress to expand the federal judiciary, as recommended for more than a decade by the Judicial Conference of the United States. That policymaking body of the federal courts has said the 9th Circuit needs at least five more judges added to its authorized 29 to alleviate its annual caseload of 12,000-plus filings.

The announcement Tuesday that senior Circuit Judge Robert Boochever died at his Pasadena home on Sunday was a sharp reminder of the advancing age of the 9th Circuit bench that relies on its purportedly retired seniors to shoulder much of the case overload. Fifteen of the court's judges are over 80, including two of the 25 active judges and 13 of its 18 seniors. Last year, a third of the court's caseload was carried by senior judges.

Since criminal appeals can't be delayed because of federal laws protecting defendants' rights, the burden of delays will fall on civil cases, said Kozinski.

''We can ameliorate some of that by relying more heavily on visiting judges, but we're already doing that quite a bit,'' he said, adding that the help available from outside is finite. ''Essentially, it's a zero-sum game, so that when you decrease the number of judges available in the federal system, you necessarily add more delay somewhere. Shifting judges around can help even out the burden, but it can't make up for judges that just aren't there.''

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, today the Senate will vote on the nomination of Stephen A. Higginson to serve as U.S. circuit judge for the Fifth Circuit. This is a seat that has been deemed by our statistics as a ''judicial emergency.'' This is the 15th judicial nomination we will confirm this month. With this vote today we have confirmed 51 article III judicial nominees during this Congress, and 30 of those confirmations have been for judicial emergencies.

Despite this brisk level of activity, we continue to hear complaints—too many complaints, unjustified complaints—about the lack of real progress by the Senate.

Let me set the record straight regarding the real progress the Senate has made, and this is in regard to President Obama's judicial nominees. We have taken positive action on 87 percent of the judicial nominations submitted before this Congress. The Senate has confirmed 71 percent of President Obama's nominees since the beginning of his Presidency, including two of the most important—Supreme Court Justices.

We continue to remain ahead of the pace set forth in the 108th Congress under President Bush. So far, we have held hearings on 85 percent of President Obama's judicial nominees. That is compared to only 79 percent at this point in President Bush's Presidency. I

note that we have another nomination hearing scheduled in the Judiciary Committee on Wednesday of this week. We have also reported 76 percent of the judicial nominees received so far this Congress, with five more scheduled for consideration on Thursday of this week. A comparable 75 percent were reported at this time in the 108th Congress.

Critics may dismiss the activity we have accomplished in committee as not making real progress. But everyone knows that no votes can take place on the Senate floor until committee action is complete, and that completion must include hearings as well as markups.

Furthermore, when it comes to floor action, we are making real progress as well. We are well ahead in this session of the confirmation pace of previous sessions of Congress. As I mentioned, after this vote, we will have confirmed 51 judicial nominees during this session of Congress. I point out that this exceeds the average number of judicial confirmations going back to the 1st session of the 97th Congress. That session was the beginning of President Reagan's first term in 1981. The average since then is 44 judicial confirmations per session. This puts the current session of Congress in the top 10 over the past 30 years. This means that during this session, President Obama has had better results with his judicial nominees than President Reagan had in seven sessions of Congress. It is more confirmed in five of the eight sessions of Congress during President Clinton's administration. President George W. Bush had six sessions of Congress with fewer nominees confirmed.

So I hope these statistics—as boring as they are—will put to rest insinuations that there is something that is somehow different about this President or that he is being treated unfairly because those sorts of comments do not hold up to analysis.

To support the ''lack of real progress''—those are the words we keep hearing—some would argue that the only valid measure of progress is how quickly a nominee is confirmed after being reported out of committee. That is only one piece of the confirmation process. Hearings and markups in committee are also necessary components. To ignore those elements distorts the picture.

I want to give you an example involving today's nominee, the one we will be voting on in less than half an hour. Mr. Higginson was nominated May 9 of this year. He had his hearing 30 days later. The total time from nomination to confirmation was 175 days. Compare this to the record of the nomination of Edith Brown Clement. She was the nominee of President Bush to be U.S. circuit judge for the Fifth Circuit. Like Mr. Higginson, she, too, was from Louisiana. May 9, 2001, was the first day of her nomination, and because it wasn't handled right away, it had to be returned to the President during the August recess of that year. And, of course, a month later, on September 4, 2001, she was renominated. Compare this length of time involving Judge Clement with the nominee today. As I said, she was renominated on September 4. She had to wait 148 days for her hearing. The total time from initial nomination to confirmation was 188 days. That is nearly 2 weeks longer than Mr. Higginson's confirmation wait.

This is just one example of how cherry-picking one piece of the confirmation process over another can lead to unfounded conclusions. If one argues that Mr. Higginson has been treated unfairly because of how long he waited for confirmation, then certainly Judge Clement was treated even worse. I note that Judge Clement was approved by the committee on a unanimous vote and confirmed on the floor of the Senate on a 99-to-0 vote.

Let's get to the present nominee. I support the nomination of Mr. Higginson. He received his bachelor of arts degree from Harvard College, summa cum laude, in 1983 and juris doctorate from Yale Law School in 1987. Upon graduating from law school, he served as a law clerk for Chief Judge Patricia Wald, U.S. Court of Appeals, DC Circuit. He then clerked at the Supreme Court for Associate Justice Byron White.

Since these clerkships, Mr. Higginson has served as an assistant U.S. attorney. From 1989 to 1993, he served in the U.S. Attorney's Office in the District of Massachusetts. In 1993, he transferred to the Eastern District of Louisiana, continuing with criminal trial work, and became chief of appeals in 1995. From 1997 through 1998, he was detailed by the Department of Justice to work for the U.S. Department of State as Deputy Director of the Presidential Rule of Law Initiative. In 2004, he became a part-time assistant attorney general while serving as a full-time associate professor of law at Loyola University New Orleans College of Law.

The American Bar Association Standing Committee on the Federal Judiciary has rated Mr. Higginson with a unanimous ''well qualified.''

I intend to vote for his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I understand we have about 4 minutes on our side. I thank my colleague, Senator GRASSLEY, for his kind words of support.

I have strong words of support for the nomination before the Senate today. I rise to support the confirmation of Stephen Higginson to the U.S. Court of Appeals for the Fifth Circuit. I was pleased to recommend Mr. Higginson to President Obama to be considered for this nomination to this important post. I am pleased to be joined by my colleague from Louisiana, who also supports this nomination and supports this confirmation.

I want to take just a moment to share with my colleagues a few highlights of Mr. Higginson's background and resume.

He has been well prepared for this position. He has resided in New Orleans with his wife Colette and their three children, Christopher, Katy, and Noelle. Prior to that, he began with a degree from Harvard, graduating summa cum laude. After graduating there, he earned a master's in philosophy—which is unusual but very welcomed in this field—from Cambridge University. He went as a Harvard Scholar. With degrees from two very prestigious institutions, he decided to pursue his J.D. from Yale Law School, where he graduated 3 years later. He earned the extraordinary distinction of being both editor-in-chief of the Yale Law Review and the winner of the Israel H. Perez prize for the best written contribution to the Law Review. After graduating from another prestigious school—Yale—he served as law clerk to the Honorable Patricia M. Wald of the U.S. Court of Appeals in the District of Columbia. He also served as law clerk to the Honorable Byron White of the U.S. Supreme Court.

Clearly, his academic and professional accomplishments have prepared him to handle the legal complexities of Federal appellate cases.

All of these things have been put into context beautifully by comments from the judges with whom he will serve should he be confirmed today by the Senate. Other justices on the court, including Judge James Dennis of the Fifth Circuit, described him this way:

> Stephen has all the qualities one needs to become a great judge and great colleague. He will be a great addition to our court, and I look forward to serving with him.

Another Fifth Circuit judge, Judge Edith Clement Brown, called Mr. Higginson ''the best criminal lawyer that has ever practiced before me in all of my 20 years serving on the Federal bench.''

Finally, from the man he will succeed should he be confirmed, Judge Jack Weiner, who took senior status last year, said this:

> I have long admired Stephen Higginson's advocacy here in the Eastern District, his scholarship as a law professor, his outstanding academic record at Harvard and Yale Law School, and as an exemplary citizen here in New Orleans. I am distinctly honored to have him succeed to my seat on this court, and I'm confident that he will discharge the duties of the U.S. Circuit Court Judge fairly, conscientiously, and honorably.

With my strongest recommendation, I ask my colleagues in the Senate to vote with me in approving this nominee today.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise and am honored to join my colleague from Louisiana, Senator LANDRIEU, as well as others, including Senators LEAHY and GRASSLEY, in strongly supporting this nomination. It is a very strong nomination.

First of all, let me say that I am very happy to work in a very close fashion with Senator LANDRIEU on all of the judicial nominations in Louisiana under President Obama. I have to say that work and that cooperation has gone more smoothly, with better results, than I could ever have imagined. So I am very pleased with that entire process.

This nomination of Stephen Higginson is perhaps the strongest, most shining example of that. Senator LANDRIEU and I worked very closely together. We were very focused on this important Fifth Circuit nomination. Quite frankly, we were both concerned about someone whom the White House was looking closely at for the nomination. We both, together, expressed that concern. And then we both very much supported this nomination of Stephen Higginson.

Senator LANDRIEU, through a process she set up independently, suggested Steve Higginson as a nominee, and I very immediately and passionately and strongly chimed in. We did this because this is a highly qualified individual who will make nothing less than a great judge.

As has been mentioned, Steve has a sterling record in many different facets. He is an associate law professor at Loyola Law School, where he has received great admiration from both his fellow professors, colleagues, and his students. He has served for about two decades as a Federal prosecutor in various offices of the U.S. Attorney, mostly the U.S. Attorney for the Eastern District of Louisiana, since 1993.

During this time in Louisiana, Steve has handled multiple investigations and criminal trials—first at the trial level, then at the appellate level—and he has supervised both criminal and civil appeals. In this role, he has authored over 100 Federal appellate briefs and he has reviewed more than 300 appellate briefs authored by others. Of course, that is very directly relevant to this job on the U.S. Fifth Circuit.

This work, and the entire work of this U.S. Attorney's Office, has been extremely important for the citizens of Louisiana in at least two respects. First of all, this U.S. Attorney's Office—led by current U.S. Attorney Jim Letten, a career prosecutor, initially appointed by President Bush and kept on by President Obama—has made enormously important strides in cleaning up political corruption in Louisiana with several landmark prosecutions, and Steve Higginson has been an important part of many of those landmark prosecutions.

Second, in the immediate aftermath of Hurricane Katrina, this U.S. Attorney's Office, headed by Jim Letten and aided very much by Steve Higginson, was extremely instrumental in helping local prosecutors and local law enforcement recover from the blows of Hurricane Katrina, get back on their feet and move forward with important criminal prosecutions.

A U.S. attorney's office is always important to a community, but I point out these two ways in which Steve Higginson's work under U.S. Attorney Jim Letten has been particularly significant for the citizens of the Greater New Orleans area.

Steve came very well prepared for all of this work. As was mentioned, he has an exemplary academic career, including editor-in-chief of the Yale Law Journal, which is no small feat. He also served as law clerk to Supreme Court Justice Byron White. His work in the U.S. Attorney's Office has also been recognized in a myriad of ways.

He has gotten many awards, so I will just mention one or two—for instance, the Excellence in Law Enforcement Award from the New Orleans Metropolitan Crime Commission, again focusing on that very important anticorruption work and post-Katrina work. At Loyola Law School, as I mentioned before, Steve has been recognized and lauded by his colleagues on the faculty, his peers, and by his students. In fact, from his students he has won Loyola's Professor of the Year Award three times in just a few years.

Steve will bring a wealth of public experience to the Federal bench and is exceptionally qualified to serve there.

I believe the Constitution is very clear that judges must interpret the law and not legislate from the bench, and I think our most solemn responsibility in terms of confirming Federal judges is to make sure we confirm judges who respect that rule of law and who live by that rule of judicial restraint. I am confident Steve Higginson will be such a judge. So, again, I am very pleased to join my colleague from Louisiana, Senator LANDRIEU, and to join many others in a very bipartisan way, including the chair of the committee, Senator LEAHY, and the ranking member, Senator GRASSLEY, in strongly endorsing and supporting the nomination of Steve Higginson to join the Fifth Circuit Court of Appeals.

Mr. President, 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. 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, I ask unanimous consent to speak as in morning business.

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

THE CLASS ACT

Mr. GRASSLEY. Mr. President, on Friday a week ago, the Secretary of HHS made a very important announcement regarding one specific provision of the Patient Protection and Affordable Care Act. Secretary Sebelius announced the administration would no longer be implementing the Community Living Assistance Services and Support Act. The acronym CLASS applies to that part of the health care bill. She said:

> When it became clear that the most basic benefit plans wouldn't work, we looked at other possibilities. Recognizing the enormous need in this country for better long-term care insurance options, we cast as wide a net as possible in searching for a model that could succeed. But as a report our department is releasing today shows, we have not identified a way to make CLASS work at this time.

This is not an ''I told you so'' speech, although it certainly could be. It isn't as though folks weren't raising significant concerns about the CLASS Act a long time before it ever passed. Two years ago, during the debate, Member after Member of the Senate came to the floor to argue the CLASS Act was destined to fail. Senator THUNE led the fight to raise awareness about the fiscal disaster the CLASS Act has now turned out to be. The Democratic chairman of the Budget Committee called it a ''Ponzi scheme.'' The Democratic chairman of the Finance Committee stated on the floor that he was ''no friend of the CLASS Act.''

When the Senate took a vote on the CLASS Act, 51 Senators, including 12 Democrats, voted to strip it from the legislation. The majority didn't rule that day because an agreement required 60 votes to strip it out.

I think special recognition should go to former Senator Judd Gregg of New Hampshire. As ranking member of the Budget Committee while in the Senate, and a senior member of the HELP Committee, he was deeply concerned about the ultimate cost of the CLASS Act on future generations. He led an amendment to require the CLASS Act be actuarially sound. He did so not because he wanted to improve the CLASS Act but because he wanted to make clear the CLASS Act could not work from a fiscal standpoint.

His amendment showed that, once implemented, the CLASS Act would take in revenues in early years and then begin to lose revenues in the outyears, ultimately either failing or requiring a massive bailout with taxpayer money to salvage the program. In a strange twist of budget scoring rules, his amendment, once accepted, led the Congressional Budget Office to score the CLASS Act as producing savings on paper in the short term.

The score made clear the CLASS Act was doomed to failure, but as only happens here in Washington, a score showing the obvious failure of the CLASS Act then became an asset, particularly an asset because the Democratic leadership wanted to show this bill was revenue neutral or even revenue positive. It was used by the Democratic leadership not for what it provided beneficiaries but what it did for the overall health care reform bill.

With the CLASS Act and some imaginary savings in the bill, it made the overall bill look as if it actually saved money. Those savings, of course, were a gimmick. Everyone in Congress knew

it, but some chose to ignore it or, worse still, to celebrate it.

The very first action on the floor for the Affordable Care Act was for the majority leader to ask unanimous consent to prevent amendments from spending the imaginary savings—and I emphasize imaginary savings—generated by the CLASS Act. It wasn't a motion to protect the CLASS Act itself but a cynical motion to protect its precious ''savings'' and the political value it had. Only in Washington, with overwhelming evidence on the table making clear a program would fail, would defense of the doomed CLASS Act become a virtue.

The Chief Actuary at CMS stated:

There is a very serious risk that the problem of adverse selection would make the CLASS program unsustainable.

The risks were known then, yet Democrats in Congress plowed ahead anyway. Why, you may ask. Well, Megan McArdle noted in the Atlantic on Monday:

The problems with CLASS were known from day one, but no one listened, because it gave them good numbers to sell their program politically.

And it wasn't just political cover. The imaginary savings gave them protection against potential budget points of order. Would the Senate-passed bill have been subject to a budget point of order without the imaginary CLASS Act savings in the bill? That is a very legitimate question.

The announcement by the Secretary of HHS provides an overdue vindication for Senator Gregg. His amendment made the announcement inevitable. Health and Human Services could not make a viable case for implementing the CLASS Act because of Senator Gregg's amendment requiring the CLASS Act to be actuarially sustainable.

Our next action is clear. Congress should repeal the CLASS Act. It was not in the House health care reform bill. A majority of the Senate voted to strip the CLASS Act from the Senate bill. It was passed under laughably false pretenses. The responsible action for Congress is to repeal it in the first relevant piece of legislation.

I take a back seat to no one on issues associated with improving the lives of seniors and the disabled. As ranking member of the Aging Committee, I oversaw critical hearings into deep and persistent problems in our Nation's nursing homes. I was the principal author of the Medicare Part D prescription drug bill, which is currently providing our seniors and people with disabilities with affordable prescription medications.

On the disability front, one of my proudest achievements is the enactment of legislation I sponsored, along with the late Senator Ted Kennedy—the Family Opportunity Act—which extends Medicaid coverage to disabled children. In large part through my efforts, the Money Follows the Person Rebalancing Act and the option for States to implement a home- and community-based services program were included in the Deficit Reduction Act of 2005.

Along with Senator KERRY, I introduced the Empowered at Home Act which, among other things, revised the income eligibility level for home- and community-based services for elderly and disabled individuals.

This is what I said about the CLASS Act on December 4, 2009:

If I thought that the CLASS Act would add to this list of improvements to the lives of seniors or the disabled, I would be first in line as a proud cosponsor of the CLASS Act. But the CLASS Act does not strengthen the safety net for seniors and the disabled. The CLASS Act compounds the long-term entitlement spending problems we already have by creating yet another new unsustainable entitlement program. The CLASS Act is just simply not viable in its current form.

That is the end of the quote I made on December 4, 2009, when that provision of the health care reform bill was up.

But this is not an ''I told you so'' speech. No, Mr. President, I am here because I am offended by the way this administration and proponents of health care reform have used the disability community throughout the debate over the CLASS Act.

Congress and the administration knew the CLASS Act would fail when it was being considered. The administration now somehow manages to treat this as a shocking discovery, and the fact that they are doing that is beyond me. But the way the administration has tried to soften the blow for the disability community rubs me the wrong way, because in the Secretary's statement on the CLASS Act I referred to, the Secretary said this:

In fact, one of the main reasons we decided not to go ahead with CLASS at this point is that we know no one would be hurt more if CLASS started and failed than the people who had paid into it and were counting on it the most. We can't let that happen.

Of course, they could have opposed the inclusion of the legislation and told the disability community the exact same thing back in 2009. Apparently, the administration is trying to tell the disability community that even though HHS can't implement the statute, they don't want to repeal it. Nicholas Pappas, a White House spokesman, said:

We do not support repeal. Repealing the CLASS Act isn't necessary or productive. What we should be doing is working together to address the long-term care challenges we face in this country.

After putting the political value of the savings ahead of the doomed policy, the administration finally admitted the CLASS Act was a failure. They apologized to the disability community. They said they don't support repeal of the CLASS Act.

After years of dodging reality, it is time for the President and the majority party to treat the disability community respectfully and honestly. If the President believes the CLASS Act can and should be saved, he should put revisions on the table much as he threatened to in early 2010 but never managed to.

Congress should weigh repeal of the CLASS Act against revisions that could be proposed to make it a legitimate program. We should do so with a full score—meaning from CBO—and in the context of our current fiscal climate with all our cards on the table, not the stealthy way it was handled in 2009. We should have a healthy and open debate.

The insipid strategy of passing something into law with a wink and a nod toward making it all better in the future is unacceptable and disrespectful to the disability community purported to be served by the legislation.

Our course is clear. For those of us who care about the disability policies, the days of ignoring reality must come to an end. We should repeal the CLASS Act and move on to other legislation that gets the job done in a fiscally responsible way.

I yield the remainder of the time.

The PRESIDING OFFICER. All time has expired.

The question is, Shall the Senate advise and consent to the nomination of Stephen A. Higginson, of Louisiana, to be United States Circuit Judge for the Fifth District of Louisiana?

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. MANCHIN). Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Missouri (Mrs. MCCASKILL) and the Senator from Virginia (Mr. WARNER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from New Hampshire (Ms. AYOTTE), the Senator from Missouri (Mr. BLUNT), the Senator from North Carolina (Mr. BURR), the Senator from Indiana (Mr. COATS), the Senator from South Carolina (Mr. DEMINT), the Senator from Texas (Mrs. HUTCHISON), the Senator from Arizona (Mr. MCCAIN), the Senator from Idaho (Mr. RISCH), the Senator from Kansas (Mr. ROBERTS), and the Senator from Florida (Mr. RUBIO).

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

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 188 Ex.]

YEAS—88

Akaka	Carper	Franken
Alexander	Casey	Gillibrand
Barrasso	Chambliss	Graham
Baucus	Coburn	Grassley
Begich	Cochran	Hagan
Bennet	Collins	Harkin
Bingaman	Conrad	Hatch
Blumenthal	Coons	Heller
Boozman	Corker	Hoeven
Boxer	Cornyn	Inhofe
Brown (MA)	Crapo	Inouye
Brown (OH)	Durbin	Isakson
Cantwell	Enzi	Johanns
Cardin	Feinstein	Johnson (SD)

Johnson (WI)	Merkley	Shaheen
Kerry	Mikulski	Shelby
Kirk	Moran	Snowe
Klobuchar	Murkowski	Stabenow
Kohl	Murray	Tester
Kyl	Nelson (NE)	Thune
Landrieu	Nelson (FL)	Toomey
Lautenberg	Paul	Udall (CO)
Leahy	Portman	Udall (NM)
Lee	Pryor	Vitter
Levin	Reed	Webb
Lieberman	Reid	Whitehouse
Lugar	Rockefeller	Wicker
Manchin	Sanders	Wyden
McConnell	Schumer	
Menendez	Sessions	

NOT VOTING—12

Ayotte	DeMint	Risch
Blunt	Hutchison	Roberts
Burr	McCain	Rubio
Coats	McCaskill	Warner

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

NATIONAL SCHOOL LUNCH AND BREAKFAST PROGRAM

Mr. MORAN. Mr. President, 2 weeks ago, I spoke on the Senate floor about some of my concerns with the pending legislation that we have been talking about now—a number of appropriations bills—including the committee report on agriculture. The last time we visited about this, I talked about the GIPSA rules. I wish to focus on one more area of concern in this appropriations bill; that is, that the Department of Agriculture has proposed a rule to revise the nutrition requirements for the National School Lunch and Breakfast Program.

In its current form, the rule contains some impractical nutrition standards and goals. I don't think there is any question that all of us in the Senate, and certainly every parent I know, would want—we all want our children to have nutritious food and we want them to have nutritious food at home and at school. That is not the point. It is not the question. What I question is whether the Department of Agriculture's rule is realistic for schools, and for those who provide food to the schools, whether they are able to comply with this new rule.

For example, as written, the rule would exclude many nutritious vegetables in school meal programs. Appropriately, the Senate adopted an amendment offered by Senator COLLINS of Maine, which I supported, that allows school nutritionists to continue to make their own recommendations based upon the most recent dietary guidelines for Americans, rather than having to follow the mandates issued in this latest USDA rule. In my view, that is exactly where these decisions should be made: in schools around our country by nutritionists—not mandated by our government in Washington, DC.

Furthermore, we must keep in mind the impact this rule will have on school budgets and food suppliers. Unfunded mandates such as this one will make it even harder for schools to provide healthy lunches for students.

The Department of Agriculture estimates that the cost of compliance over a 5-year period will reach $6.8 billion. The Federal reimbursement already does not cover the full cost of preparing a meal in many schools across our country. This new USDA rule will further drive up the costs of providing lunches and school districts will have to make up the difference. This doesn't seem like a reasonable approach when many school districts are already struggling to make ends meet.

Let me give an example of what is in this rule. Once finalized, schools would be required to reduce sodium content in breakfasts by up to 27 percent and school lunches by up to 54 percent. There are a couple problems with this requirement. There is no suitable replacement for sodium that can maintain the same functions of flavor and texture. Also, reducing sodium is not just a function of limiting raw salt content. Many ingredients have sodium in them that occurs naturally.

School food suppliers have been working for years to reduce the amount of sodium in their food products. However, they need additional time to come up with a solution that balances nutritional value with taste so kids will eat the school lunch.

This rule would also change how nutritional content is measured—rather than measure nutrition based on density, the Department of Agriculture rule proposes to measure nutritional content based on volume. For example, tomato paste is nutritionally dense, but the Department of Agriculture says it must meet the same volume as a fresh tomato. That doesn't make much sense. Why would we take a metric to be the arbitrary volume requirement instead of just measuring the nutritional value?

The bottom line is, kids can still get the right nutrients from food products if they are measured by nutritional content.

A more sensible approach to making sure children have healthy options for breakfast and lunch would be to work together with scientists, nutritionists, and industry representatives toward a set of intermediate goals. Food costs, service operations, and student participation rates could then be more closely evaluated before moving on to the next goal. This would give school districts and food suppliers the chance to make changes in a more reasonable timeframe.

Our colleagues in the House included a provision in their version of this legislation that directed the Department of Agriculture to issue a new proposed rule that would not add unnecessary and costly regulations to the school lunch and breakfast programs. Unfortunately, this language was not included in the Senate version of the bill. In conference, I will continue to work with my colleagues to make sure the Department of Agriculture is not making it harder for schools to provide healthy lunches but instead is working alongside local schools and their officials to develop better nutritional goals.

TRIBUTE TO MR. EMMETTE THOMPSON AND MISSION OF HOPE

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to one of the finest charitable organizations serving the people of Kentucky, Mission of Hope, and its executive director, Mr. Emmette Thompson. Mission of Hope, located in Knoxville, TN, has been providing the impoverished children and families in the rural Appalachian communities of southeastern Kentucky and elsewhere with food, clothing, and other necessities for over 15 years.

Mission of Hope was founded in 1966 in response to a television broadcast entitled ''Hunger for Hope,'' in which anchor Bill Williams informed viewers of the destitution and poverty that affected families in the mountains and hills of southeastern Kentucky. The ''Hunger for Hope'' broadcast inspired founder Julie Holland to enlist the help of her church, Central Baptist of Bearden, to aid in handing out children's coats that had been donated by a local department store.

Since that first donation, Mission of Hope has grown to serve more than 17,000 people throughout more than 80 schools and organizations in Kentucky, Tennessee, Virginia and West Virginia. Over 85 percent of the population in this region suffers from hunger and joblessness due to a depleted coal mining economy.

Mission of Hope's objective is to provide, every year, the hunger-stricken families of Appalachia with hope and the chance at a better life through evangelical Christian charitable ministries. By partnering with school family-resource centers and small community ministries, Mission of Hope is able to provide assistance to those children and families most severely impoverished, and donates new clothes, food, toys, and school supplies through organized programs and events.

In addition, Mission of Hope assists in the repairing of homes, and provides a $2,500 scholarship to 11 qualified students from schools in the region. They