

BLUNT, Mr. COCHRAN, Mr. MCCONNELL, Ms. COLLINS, Mr. MORAN, Mr. HOEVEN, Mrs. HUTCHISON, and Mr. SHELBY conferees on the part of the Senate.

# EXECUTIVE SESSION

## NOMINATION OF SCOTT WESLEY SKAVDAHL TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF WYOMING

## NOMINATION OF RICHARD G. ANDREWS TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE

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 Scott Wesley Skavdahl, of Wyoming, to be United States District Judge for the District of Wyoming, and Richard G. Andrews, of Delaware, to be United States District Judge for the District of Delaware.

The PRESIDING OFFICER. There is 2 minutes, equally divided.

The Senator from Wyoming.

Mr. ENZI. Madam President, I wish to ask for your wholehearted support for Judge Skavdahl of Wyoming. He was nominated by our Democratic Governor. He was appointed by the President, and he has the wholehearted support of our delegation. We have spoken for him in committee and are doing that again on the floor. We have a full statement we submitted. So I would thank you for your vote on this nomination. He came up through the courts in Wyoming and now will be a Federal judge, with your help.

I thank the Chair.

Mr. LEAHY. Madam President, I thank the majority leader for securing votes on 2 of the 22 judicial nominees on the Senate's Executive Calendar ready for Senate consideration. I am glad that we will finally vote on the nominations of Scott Skavdahl to the District of Wyoming and Richard Andrews to the District of Delaware, both qualified, consensus nominees reported unanimously by the Judiciary Committee nearly 2 months ago. I wish that we were able to vote today on the other 20 judicial nominees who have been ready and waiting for final Senate action.

This morning the Judiciary Committee reported another 5 judicial nominations, bringing the total to 27 who have been thoroughly vetted, considered and reported by the Judiciary Committee. All 27 of these nominees are qualified and have the support of their home State Senators, Republican and Democratic. Twenty-three of the 27 nominees, like the 2 we will consider today, were unanimously approved by the Judiciary Committee with all members. Senate Democrats are pre-

pared to have votes on all these important nominations. I know of no good reason why the Republican leadership is refusing to proceed on the 20 nominees who have been stalled before the Senate for weeks and months. At a time when vacancies on Federal courts throughout the country remain near 10 percent, the delay in taking up and confirming these consensus judicial nominees is inexcusable.

The American people need functioning Federal courts with judges, not vacancies. Though it is within the Senate's power to take significant steps to address this problem, refusal by Senate Republicans to consent to voting on consensus judicial nominations has kept vacancies high for years. The number of judicial vacancies has been near or above 90 for over 2½ years. A recent report by the nonpartisan Congressional Research Service found that we are in the longest period of historically high vacancy rates in the last 35 years. These needless delays do nothing to help solve this serious problem and are damaging to the Federal courts and the American people who depend on them.

More than half of all Americans—over 163 million—live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans just agreed to vote on the nominations reported by the Judiciary Committee with bipartisan support. As many as 26 States are served by Federal courts with vacancies that would be filled by these nominations. Millions of Americans across the country are harmed by delays in overburdened courts. The Republican leadership should explain why they will not consent to vote on the qualified, consensus candidates nominated to fill these extended judicial vacancies.

Senator GRASSLEY and I have worked together to ensure that each of the 27 nominations reported by the Judiciary Committee was fully considered after a thorough but fair process, including completing our extensive questionnaire and questioning at a hearing. This White House has worked with the home State Senators, Republicans and Democrats, and each of the judicial nominees being delayed from a Senate vote is supported by both home State Senators. The FBI has conducted a thorough background review of each nominee. The American Bar Association's Standing Committee on the Federal Judiciary has conducted a peer review of their professional qualifications. When the nominations are then reported unanimously by the Judiciary Committee, there is no reason for months and months of further delay before they begin serving the American people.

Despite the damagingly high number of vacancies that has 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 dur-

ing the first 3 years of President Bush's administration. That is simply not true. It is wrong to suggest that the Senate has achieved better results than we did in 2001 through 2003. As I have pointed out, in the 17 months I chaired the Judiciary Committee in 2001 and 2002, the Senate confirmed 100 of President Bush's Federal circuit and district court nominees. By contrast, after the first 2 years of President Obama's administration, the Senate was allowed to proceed to confirm only 60 of his Federal circuit and district court nominees.

Indeed, as 2010 was drawing to a close, Senate Republicans refused to proceed on 19 judicial nominees who had been considered and reported by the Judiciary Committee and forced them to be returned to the President. It has taken the Senate nearly twice as long to confirm the 100th Federal circuit and district court judge nominated by President Obama as we had when President Bush was in the White House.

During the third year of President Bush's administration, the Senate confirmed 68 of his Federal circuit and district court nominees. By early November, 66 judges had been confirmed. In contrast this year, even including many nominees confirmed this year who should have been confirmed last year, the Senate has only confirmed 53 of President Obama's judicial nominees. Fifty-three is not better than 66. By this point in President Bush's first 3 years, the Senate had confirmed 166 of his Federal circuit and district court nominees. So far in the 3 years of the Obama administration, that total is only 113. One hundred and thirteen is not better than 166. Notably, the Senate this year is lagging far behind the pace we set for circuit court nominations in the third year of President Bush's administration. The Senate this year has confirmed just 6 circuit court nominations, compared to 12 at this point in President Bush's third year. The six confirmations this year are only half as many as were confirmed at this point in President Bush's third year. There are five circuit court nominations pending on the Senate's Executive Calendar today and a sixth circuit court nomination reported by the committee this morning. By this point in the third year of President Bush's administration, the Senate had confirmed a total of 29 of his circuit court nominees. By comparison, the Senate has confirmed only 22 of President Obama's circuit court nominees. Twenty-two is not better than 29. By this point in the Bush administration, vacancies had been reduced to 42. Today they stand at 85. Eighty-five vacancies is not better than 42.

This is not the way to make real progress. No resort to percentages of nominees "processed" or "positive action" by the committee can excuse the lack of real progress by the Senate. In the past, we were able to confirm consensus nominees more promptly, often

within days of being reported to the full Senate. They were not forced to languish for months. The American people should not have to wait 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.

I think confirmations and vacancies numbers better reflect the reality in our Federal courts and for the American people. It is hard to see how the Senate is supposed to be doing better when it remains so far behind the pace we set in those years. During President Bush's first 4 years, the Senate confirmed a total of 205 Federal circuit and district court judges. As of today, we would need another 92 confirmations over the next 12 months to match that total. That means a faster confirmation rate for the next 12 months than in any 12 months of the Obama administration to date. That would require Senate Republicans to abandon their delaying tactics. I hope they will.

The two nominations we consider today are each superbly qualified consensus nominees whom I expect will be confirmed with significant bipartisan support. The nomination of Judge Scott Skavdahl to fill a vacancy on the District of Wyoming was reported unanimously by the Judiciary Committee on September 8, nearly 2 months ago. Judge Skavdahl, who is currently a magistrate judge on the District of Wyoming, having previously served as a law clerk for Chief Judge William Downes, the judge he is nominated to replace, has the strong support of his Republican home State senators, Senators ENZI and BARRASSO. Judge Skavdahl spent 8 years as a State court judge for the Seventh Judicial District of Wyoming before that working in private practice in Wyoming. The ABA's Standing Committee on the Federal Judiciary unanimously rated Mr. Skavdahl "well qualified" to serve, its highest rating.

The Judiciary Committee also unanimously reported the nomination of Richard Andrews to fill a vacancy on the District of Delaware nearly 2 months ago. Mr. Andrews currently serves as Delaware's State prosecutor, having previously spent 24 years as a Federal prosecutor in Delaware, where he rose through the ranks to become chief of the Criminal Division. Mr. Andrews was appointed to serve as the acting U.S. attorney for Delaware on three occasions, including by John Ashcroft, the Attorney General under President Bush. He also clerked for Chief Judge Collins Seitz of the U.S. Court of Appeals for the Third Circuit. Mr. Andrews has the strong support of both his home State Senators, Senator CARPER and Senator COONS, who worked with Mr. Andrews in Delaware. I thank Senator COONS for chairing the committee's hearing on Mr. Andrews' nominations and for working hard to move it through the committee and Senate process.

The Senate must come together to address the serious judicial vacancies crisis on Federal courts around the country that has persisted for well over 2 years. We can and must do better for the more than 163 million Americans being made to suffer by these unnecessary Senate delays.

Mr. GRASSLEY. Madam President, today the Senate will confirm two more judicial nominees, which will be the 52nd and 53rd article III confirmations of this Congress. We have confirmed 17 judges in the past 30 days.

I may sound like a broken record, but despite what others have said, we have and continue to make real progress on consensus nominees. We have taken positive action on 85 percent of the judicial nominees submitted by President Obama this year. Over 91 percent of nominees submitted during President Obama's Presidency have had their hearing. With these votes, only during 8 of the last 30 years has the Senate confirmed more judicial nominees than we have done during this year.

I would like to say a few words about the nominees, both of whom I support.

Scott Wesley Skavdahl is nominated to be a district court judge for the District of Wyoming. He is a graduate from the University of Wyoming and their College of Law. Judge Skavdahl began his legal career in 1992 as an associate attorney at the law firm of Brown, Drew, Massey & Sullivan. After 2 years with the firm, he departed for a 3-year clerkship with the Honorable William F. Downes on the District Court for the District of Wyoming.

In 1997, he returned to private practice at the firm Williams, Porter, Day & Neville, where he made partner in 2000. From 2001 to 2003, Judge Skavdahl served as a part-time U.S. magistrate judge. He also served as a State district judge for the Seventh Judicial District of Wyoming from 2003 to 2011. In February 2011, Judge Skavdahl was appointed U.S. magistrate judge for the District of Wyoming, a post he holds to this day.

The American Bar Association Standing Committee on the Federal Judiciary has rated Judge Skavdahl with a unanimous "well qualified" rating.

Richard G. Andrews is nominated to be a district judge for the District of Delaware. Mr. Andrews received his bachelor of arts from Haverford College in 1977 and a juris doctorate from the University of California at Berkeley Boalt Hall School of Law in 1981.

He began his legal career as a law clerk to the Honorable Collins J. Seitz, Chief Judge of the U.S. Court of Appeals for the Third Circuit. Mr. Andrews then joined the Office of the United States Attorney for the District of Delaware as a Federal law clerk. After a year in that position, he was named an assistant U.S. attorney.

Mr. Andrews spent the next 24 years in that office, handling a mix of criminal and civil cases in Federal district

court. He has served on three occasions as acting or interim U.S. attorney, was first assistant for a number of years in the office, and served as chief of the Criminal Division.

Since 2007, Mr. Andrews has served as State prosecutor within the Delaware Department of Justice.

The American Bar Association Standing Committee on the Federal Judiciary has rated Mr. Andrews with a substantial majority "well qualified," minority "qualified" rating.

The PRESIDING OFFICER. Who yields back time?

Mr. HARKIN. Madam President, I yield back all time on our side.

The PRESIDING OFFICER. Time is yielded back.

Under the previous order, the nomination of Richard G. Andrews, of Delaware, to be United States District Judge for the District of Delaware is confirmed.

The question is, Will the Senate advise and consent to the nomination of Scott Wesley Skavdahl, of Wyoming, to be United States District Judge for the District of Wyoming?

Mr. INHOFE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Illinois (Mr. DURBIN) and the Senator from California (Mrs. BOXER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN) and the Senator from Nevada (Mr. HELLER).

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 197 Ex.]

YEAS—96

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

## NOT VOTING—4

Boxer  
Coburn

Durbin  
Heller

The nomination was confirmed.

The PRESIDING OFFICER (Ms. KLOBUCHAR). Under the previous order, the motions to reconsider are considered made and laid upon the table. The President shall be immediately notified of the Senate's action.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session. The Senator from Vermont.

## MORNING BUSINESS

Mr. LEAHY. Madam President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

The Senator from Oklahoma is recognized.

## THE HIGHWAY BILL

Mr. INHOFE. Madam President, after the vote today, I think that any effort to pass a bill such as the ones we just voted on would be very difficult. But something good does happen from that; that is, we had the vast majority of people in the Chamber recognizing that we need to do something that would be stimulative to the economy—something unlike the stimulus bill we had before, where only 3 percent of the money actually went to building roads, highways, maintenance, and that type of thing.

I do appreciate the fact that we are now in a position where I think, with this behind us, we can be looking at a good, legitimate highway transportation reauthorization bill. I have been working very closely with Senators BOXER, VITTER, and BAUCUS—we are considered the “big four” in the Environment and Public Works Committee—to come up with something. I have to say that we have worked very hard, and I am talking about hours and hours. Anytime you can get Senator BARBARA BOXER from California and me to agree on something, you know we have gone through a lot of work—and we have. We have gone through a lot of give and take.

Senator BOXER and I, along with Senators VITTER and BAUCUS, recognize that we desperately need to have a transportation reauthorization bill, and we need to do it the right way. All these things we have been doing with extensions don't work. There is not a Member of this Chamber who doesn't go back every week and talk to his transportation director and say why can't we quit these extensions and get a good bill.

We have a good bill, and we are talking about reforms. It is our intention

next week, I believe, to mark up this bill. We are looking forward to that. I have a very strong bias toward transportation. For the years I was in the House, I was on that committee. We didn't have these problems then. We had a highway trust fund that always had a surplus because we were very aggressive at that time and, of course, a lot more people were purchasing gas at that time and revenues were up. So we had a surplus.

Unfortunately, this always happens in Washington, DC. Members came along and looked at the surplus, and that was a target. Everybody wanted in on it, so they put their deals into the highway trust fund. That is partly why we got to where we are today.

I appreciate the conversation we have gotten from the President. He talks about how he wants infrastructure, and he has a picture of where he was standing in front of a bridge making a speech about creating jobs. But he doesn't have anything in his program that does anything with infrastructure. Our problem is that President Obama has been talking the talk, and he has spoken more about infrastructure than any other President since Eisenhower proposed the Interstate Highway System. But when you get up to the \$800 billion stimulus bill, in doing the calculations, only 3 percent—about \$27 billion of that—was in highway construction or maintenance. Senator BOXER and I made an effort on the floor—a bipartisan effort—to try to raise the percentage. I wanted it up to 10 percent or higher, but we were unable to do it. The President was not on our side on that.

I think the good news is that today's votes, of both Democrats and Republicans, showed that they are very interested and supportive of a highway bill. We have gotten a lot of that out of the way and we can concentrate on a highway bill. I think both parties are trying to create jobs and economic growth through the building of highways and bridges.

Most Americans are unaware of how damaging regulations are. When I stop and think about proposing a massive program, which is what we are talking about now—reauthorization program—it is massive in that the funding level would probably stay the same as it has been since the highway authorization bill of 2005. But when they talk about that, we are always faced with the regulation problems. We are trying to address in this bill the regulation problems that are out there to try to have some shortcuts, to try to get some things done that otherwise would take a lot longer. Regulations have been a huge problem.

## EPA REGULATIONS

This administration's Environmental Protection Agency alone has an unprecedented number of regulations, and they are destroying jobs. The results are there. I will mention the five most expensive regulations of all the regulations that have come out.

First is the greenhouse gas regulation. I think we all know what that is. That is them trying to do something through regulations they were unable to do through legislation.

Second, ozone, the national ambient air quality standards. That would be about a \$678 billion loss in GDP by 2020.

Incidentally, I failed to mention the greenhouse gas regulations, which would be in excess of \$300 billion to \$400 billion a year.

The boiler MACT regulations—that would be a \$1 billion loss to GDP. Utility MACT—MACT is maximum achievable technology. In other words, one of the problems with all these MACT bills coming out of the administration is that there is no technology available to carry out the mandates on emissions. Cement MACT is another, with \$3.5 billion in compliance costs.

Fortunately, in September, President Obama withdrew the EPA's proposed toughened ozone standards. There is good reason for that, and one is that ozone standards are supposed to be predicated upon new science. This was on the same science that the last ozone changes were based on. I think when people caught on to that and recognized what it would cost—in Oklahoma, we would be looking at some 15 counties that would be out of attainment, and there is nothing more dreadful that could happen to a State than have your counties go out of attainment so that you are not able to recruit jobs, or even keep the jobs you have. We would be talking about around 7 million jobs throughout the United States. Because of that, politically, he postponed that. Frankly, I think he is postponing it until after the next election. If he should be re-elected, I can assure you we will see that again.

Democrats always say we need to have tax increases and that is the best way to grow. I look at this sometimes. Recently, the Office of Management and Budget came up with a calculation that is consistent with one I have been using for 20 years: For each 1-percent increase in economic activity in this country, or 1-percent growth, that equates to about \$50 billion of new revenue. Interestingly enough, this is all a Republican idea. President Kennedy, who was a Democrat, said we have to raise more money for the Great Society, and the best way to raise money is to reduce marginal tax rates. He did it and it worked. We saw what President Ronald Reagan did in the years that followed that. During the 8 years he was in office, the proceeds for marginal rates went from \$204 billion to \$466 billion. That was at a time when rates were reduced more than any other 8-year period in history. We are looking at other opportunities to reduce regulations and all that so we can resolve the problem.

There is one thing that is very important—and I know there is nobody in this Chamber who doesn't recognize the concern I have expressed over the